



LEGISLATIVE AND PUBLIC POLICY COMMITTEE MEETING NOTICE/AGENDA

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Meeting Site

State Council Office
1507 21st Street, Suite 210
Sacramento, CA 95811
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Teleconference Site

Tri-Counties Regional Center
1900 E. Los Angeles Avenue,
Second Floor
Simi Valley, CA

JANUARY 19, 2012

10:00 a.m. – 3:30 p.m.

Pursuant to Government Code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in the meeting, should contact Michael Brett at (916) 322-8481 or michael.brett@scdd.ca.gov by 5:00 pm, January 13, 2012.

**Denotes action item.*

Page

- | | |
|---|--------------|
| 1. CALL TO ORDER | R. Ceragioli |
| 2. ESTABLISHMENT OF QUORUM | R. Ceragioli |
| 3. INTRODUCTIONS AND ANNOUNCEMENTS | R. Ceragioli |

4. *APPROVAL OF 10/27/11 MINUTES

R. Ceragioli

3

5. PUBLIC COMMENTS

*This item is for members of the public only to provide comments and/or present information to the Council on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

6. LEGISLATIVE ISSUES

A. Federal Legislation

*i. HR 3086

K. Alipourfard

7

*ii. S. 2020

C. Arroyo

28

*iii. HR 3356

K. Alipourfard

58

*iv. HR 3610

K. Alipourfard

65

B. State Legislation

C. Arroyo

i. Assembly Bill 254 Update

148

ii. Legislative Update

iii. Legislative Calendar

171

C. Budget Update

C. Risley

i. 2011-12 Budget Trigger

173

ii. Highlights of 2012-13 Governor's Budget

iii. Federal Budget Update

185

7. AREA BOARD LEGISLATIVE UPDATES

R. Smith

8. INFORMATION ITEMS

All

9. ADJOURNMENT

R. Ceragioli

DRAFT
Legislative & Public Policy (LPPC) Committee Minutes
Thursday, October 27, 2011

Members Present

Ray Ceragioli, Chairperson
Jennifer Allen
Tho Vinh Banh
Lisa Cooley
Margaret Shipp
Leroy Shipp
Rocio Smith

Members Absent

David Mulvaney
Marilyn Barraza
Dan Boomer
Denise Filz
Connie Lapin
Bill Moore

Others Present

Karim Alipourfard
Christofer Arroyo
Carol Risley

1. CALL TO ORDER

Ray Ceragioli, Chairperson called the meeting to order at 10:10 AM.

2. ESTABLISHMENT OF A QUORUM

A quorum was established.

3. INTRODUCTIONS AND ANNOUNCEMENTS

Members introduced themselves and announcements were made.

4. APPROVAL OF 4/21/11 MINUTES

It was moved, seconded (L. Shipp/Smith), and carried to approve the May 19, 2011 Committee minutes as written.

5. PUBLIC COMMENTS

No comments were provided.

6. LEGISLATIVE ISSUES

Some bills that passed were reviewed including AB 1156, SB 161, SB 309, SB 368, and SB 946. A new Legislative Update was provided to the Committee that did not include vetoed or passed bills.

AB 1244 was reviewed. It was moved, seconded (L. Shipp/Cooley), and carried to reaffirm support for AB 1244.

Assemblymember Beall (author) provided the Committee with draft amendments to AB 254 that were reviewed by LPPC with the following comments developed for submittal:

Section 4868:

(d) Members noted that “integrated work is currently defined in WIC section 4581 (o), thus recommend consideration of not redefining it in this section or referencing the definition in that section here. Further, while microenterprises are not defined in existing law, perhaps it should be and the members recommended you consider the definition included for microenterprises that appears in the Employment First Report which reads:

Microenterprises are small businesses owned by individuals with developmental disabilities, with accompanying business licenses, taxpayer identification numbers other than social security numbers, and separate business bank accounts. Microenterprises may be considered competitive employment, integrated employment, and integrated competitive employment.

It was recommended that the reference to supported employment be tied back to the definition of supported employment that appears in WIC section 4581 (n) to insure consistency of understanding.

(f) Members felt it important to add language in this section that clarifies that health and employment benefits should be commensurate with other employees performing similar tasks; recognizing that not all employers offer some benefits to any of their employees and so as not to eliminate an employment option because of this situation.

Section 4869:

This language accurately reflects the Council's proposed Employment First policy, however in keeping with your inclusion of self-employment, supported employment and microenterprises, as defined; thought adding these options could strengthen the policy.

It is the policy of the State of California that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities, including but not limited to supported employment, self-employment and microenterprises as defined in this division.

- (a) Members were unclear as to the intent of the language which reads "...but individuals do not have to meet exclusion criteria in order to choose goals other than integrated competitive employment."

Other:

There are additional recommendations in the Employment First report relative to potential language changes in the WIC that the Committee recommends be considered for inclusion in AB 254:

*Add the following language to Welfare and Institutions Code, section 4501 "...developmental disabilities present social, **educational**, medical, economic, and legal problems of extreme importance."*

- *Add the following definition for education in Welfare and Institutions Code, section 4512 "Education means preschool, elementary, secondary, and postsecondary instruction and training.*
- *Amend Welfare and Institutions Code section 4692 to exempt, on an individual basis, services that support individuals in integrated competitive employment from reductions that impact their potential for success in their jobs.*

It was moved, seconded (M. Shipp/L. Shipp), and carried to reaffirm support, sponsor or cosponsor AB 254.

Existing bills that may merit the attention of the LPPC were reviewed: AB 40, AB 154, AB 181, AB 254, AB 367, AB 519, SB 462, SB 472, SB 558, and SB 764.

The Council's 2011-12 Legislative and Policy Platform was distributed.

There was a discussion of the state budget and it was moved, seconded (M. Shipp/L. Shipp), and carried to oppose the state budget cuts resulting from the trigger. A discussion of the federal budget and H.R. 3086 (subminimum wage) followed.

7. AREA BOARD LEGISLATIVE UPDATES

Rocio Smith reported that the Area board 5 Annual Townhall meeting will be held on January 27, 2012.

8. INFORMATION ITEMS

Financial management service (FMS) implementation at regional centers was discussed with many questions and concerns.

Regional centers are voter registration centers; however some appear not to be implementing this charge.

9. ADJOURNMENT

The meeting was adjourned at 2:45 PM.

LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: HR 3086--Fair Wages for Workers with Disabilities Act of 2011

SUMMARY: This bill intends to phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.

BACKGROUND: Announcing the introduction of H.R. 3086 On Oct. 4, 2011 – Representative Stearns explained in a press release that “Although the disabled have made significant progress in achieving the American dream, they still face unfairness in the workplace under a provision that allows employers to pay workers with disabilities less than the federal minimum wage,” and that “protections for disabled workers were excluded in the Fair Labor Standards Act in the mistaken belief that they were not as productive as other workers. Workers with disabilities contribute to our economy and to our society, and they deserve equal pay for equal work.” This legislation would phase out the provision in the Fair Labor Standards Act that allows sub-minimum wage for disabled workers. Dr. Marc Maurer, President of the National Federation of the Blind, expressed strong support for the legislation, “We applaud Representatives Stearns and Bishop and we hope that a significant majority of their colleagues possess the courage and creativity to end over seventy years of exploitation of people with disabilities

ANALYSIS/DISCUSSION: The Fair Wages for Workers with Disabilities Act is a long-overdue effort to correct an injustice written into a law meant to protect workers from abuse and exploitation. Workers with disabilities were excluded from the protections of the Fair Labor Standards Act because of the false belief that individuals with disabilities cannot be as productive as individuals without disabilities.

COUNCIL STRATEGIC PLAN OBJECTIVE: Support public policies that positively impact the lives of persons with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: None

STAFF RECOMMENDATION: Support H.R 3086

ATTACHMENT: H.R. 3086

PREPARED: Karim Alipourfard December 30, 2011

112TH CONGRESS
1ST SESSION

H. R. 3086

To phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2011

Mr. STEARNS (for himself and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To phase out special wage certificates under the Fair Labor Standards Act of 1938 under which individuals with disabilities may be employed at subminimum wage rates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Wages for Work-
5 ers with Disabilities Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Current Federal law allows the Secretary of
9 Labor to grant special wage certificates to entities

1 that provide employment to workers with disabilities,
2 allowing such entities to pay their disabled workers
3 at rates that are lower than the Federal minimum
4 wage.

5 (2) The practice of paying workers with disabili-
6 ties less than the Federal minimum wage dates
7 back to the 1930s, when there were virtually no em-
8 ployment opportunities for disabled workers in the
9 mainstream workforce.

10 (3) Today, advancements in vocational rehabili-
11 tation, technology, and training provide disabled
12 workers with greater opportunities than in the past,
13 and the number of such workers in the national
14 workforce has dramatically increased.

15 (4) Employees with disabilities, when provided
16 the proper rehabilitation services, training, and
17 tools, can be as productive as nondisabled employees.
18 Even those individuals that are considered most se-
19 verely disabled have been able to successfully obtain
20 employment earning minimum wage or higher.

21 (5) While some employers possessing special
22 wage certificates claim to provide rehabilitation and
23 training to disabled workers to prepare them for
24 competitive employment, the fact that such employ-
25 ers can pay their workers less than the Federal min-

1 imum wage gives them an incentive to exploit the
2 cheap labor provided by their disabled workers rath-
3 er than to prepare those workers for integrated em-
4 ployment in the mainstream economy.

5 (6) Many employers with a history of paying
6 subminimum wages benefit from philanthropic dona-
7 tions and preferred status when bidding on Federal
8 contracts. Yet they claim that paying minimum wage
9 to their employees with disabilities would result in
10 lack of profitability and forced reduction of their
11 workforces.

12 (7) Other employers, recognizing that the pay-
13 ment of subminimum wages is in fact exploitation of
14 disabled workers, are now paying the Federal min-
15 imum wage, or higher, to their employees with dis-
16 abilities without reducing their workforces, while still
17 maintaining their profitability. For example, Na-
18 tional Industries for the Blind (NIB) agencies ex-
19 ploited their blind employees for years through the
20 payment of subminimum wages, claiming they could
21 not maintain profitability otherwise. Now, "All NIB
22 associated agencies are committed to the NIB Board
23 policy to pay employees, whose only disability is
24 blindness, at or above the Federal minimum wage or
25 their state minimum wage, whichever is highest."

1 (8) The Wage and Hour Division of the De-
2 partment of Labor is charged with the responsibility
3 for oversight of these special wage certificates. The
4 results from thorough investigations conducted by
5 the Government Accountability Office—“Stronger
6 Federal Efforts Needed for Providing Employment
7 Opportunities and Enforcing Labor Standards in
8 Sheltered Workshops, Report to the Congress,
9 Comptroller General of the United States” (HRD-
10 81-99) and “Report to Congressional Requesters,
11 Special Wage Program: Centers Offer Employment
12 and Support Services to Workers With Disabilities,
13 But Labor Should Improve Oversight” (GAO-01-
14 886)—explain that due to lack of capacity, training,
15 and resources, the Wage and Hour Division is in-
16 capable of enforcing compliance with the submin-
17 imum wage provision. Furthermore, the significant
18 appropriation that would be required to improve
19 oversight of the regulation would be better spent im-
20 proving employment outcomes for people with dis-
21 abilities.

22 (9) According to the rules established under
23 section 14(c) of the Fair Labor Standards Act of
24 1938, employers are to determine the special wage
25 to be paid to a disabled employee through a com-

1 plicated method that unfairly establishes a produc-
 2 tivity benchmark that would be difficult for anyone
 3 to maintain. The inability of many employers to cor-
 4 rectly establish the wage pursuant to the rule has
 5 regularly resulted in disabled employees receiving
 6 even less than the special minimum wage (below the
 7 federally established minimum wage) that they
 8 should have received under the regulation.

9 **SEC. 3. TRANSITION TO FAIR WAGES.**

10 (1) DISCONTINUANCE.—Effective on the date of
 11 enactment of this Act, the Secretary of Labor shall
 12 discontinue issuing special wage certificates under
 13 section 14(c) of the Fair Labor Standards Act of
 14 1938 (29 U.S.C. 214(c)) to any new entities not
 15 currently holding a certificate.

16 (2) TRANSITION.—All special wage certificates
 17 held on the date of enactment of this Act—

18 (A) by private for profit entities shall be
 19 revoked 1 year after such date of enactment;

20 (B) by public or governmental entities
 21 shall be revoked 2 years after such date of en-
 22 actment; and

23 (C) by non-profit entities shall be revoked
 24 3 years after such date of enactment.

1 (3) REPEAL.—Effective 3 years from the date
2 of enactment of this Act, section 14(c) of the Fair
3 Labor Standards Act of 1938 (29 U.S.C. 214(c)) is
4 repealed and any remaining special wage certificates
5 issued under such section shall be revoked.

○

The Case Against the Section 14(c) Subminimum Wage Program
Prepared for the National Federation of the Blind
By Samuel R. Bagenstos*

Introduction

When Congress adopted the Americans with Disabilities Act in 1990, it found that “individuals with disabilities continually encounter various forms of discrimination,” including “overprotective rules and policies,” “segregation,” and “relegation to lesser services, programs, activities, benefits, jobs, and other opportunities.”¹ This discrimination, Congress found, results “from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.”² More than twenty years later, the statute books still contain a federal law that itself discriminates against people with disabilities, reflects an overprotective policy toward them, and encourages segregation and relegation to lesser jobs. That law is Section 14(c) of the Fair Labor Standards Act, which authorizes employers to pay less than the minimum wage to certain employees with disabilities.³ In the post-ADA world, Section 14(c) is an anomaly in the law, and it is one that should be eliminated.

This paper begins by describing the Section 14(c) program. It then explains how Section 14(c) discriminates against people with disabilities.

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¹ 42 U.S.C. § 12101(a)(5).

² 42 U.S.C. § 12101(a)(7).

³ 29 U.S.C. § 214(c).

Finally, the paper shows why the three justifications that have been offered for the program—that it encourages open-market employers to hire people with disabilities, that it gives people with disabilities a chance to develop their skills in preparation for open-market work, and that it provides people with disabilities who cannot work on the open market a chance to earn at least something—are not consistent with actual experience under the program. The paper thus argues that Congress should repeal Section 14(c).

The Section 14(c) Program

Federal laws requiring that employers pay a minimum wage have always made an exception for some workers with disabilities. The first economy-wide federal minimum wages were set during the Great Depression by the National Recovery Administration (NRA). Pursuant to an executive order issued by President Roosevelt, the NRA exempted sheltered workshops from the general minimum wages.⁴ In 1937, after the Supreme Court invalidated the NRA's authorizing legislation, Congress began work on the Fair Labor Standards Act (FLSA). The FLSA adopted nationwide regulations of workers' wages and hours. From the beginning, the FLSA bills contained an exemption for people with disabilities. This exemption occasioned little discussion during the debates over the bills, though at least one Member of

⁴ See Congressional Research Service, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act* 6 (2007 ed.); 1 United States Department of Labor, *Sheltered Workshop Study: A Nationwide Report on Sheltered Workshops and Their Employment of Handicapped Individuals* 10 (1977).

Congress did note approvingly in passing that what he called “subnormal workers” would not be entitled to receive a minimum wage, and Roosevelt Administration officials endorsed that exclusion.⁵ Perhaps the only affirmative argument in the legislative history for exempting workers with disabilities from the minimum wage came from Yale professor Hudson Hastings. In testimony before a joint hearing before the Senate and House Labor Committees, Hastings expressed concern that the minimum wage would be set “so high as to prevent millions of workers who are subnormal in their physical or mental capacities from securing any employment whatsoever.”⁶

After a number of amendments not relevant to the matter at issue here, Congress adopted and President Roosevelt signed the FLSA in 1938. The bill as adopted into law provided that the federal Wage and Hour Administrator, “to the extent necessary to prevent curtailment of opportunities for employment,” shall provide for “the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at

⁵ See *Fair Labor Standards Act of 1937: Joint Hearings Before the Senate Comm. on Education and Labor and the House Comm. on Labor*, 75th Cong., 1st Sess., at 37-38 (1937) (colloquy between Rep. Fitzgerald and Assistant Attorney General Jackson); *id.* at 190 (testimony of Labor Secretary Perkins).

⁶ *Fair Labor Standards Act of 1937: Joint Hearings Before the Senate Comm. on Education and Labor and the House Comm. on Labor*, 75th Cong., 1st Sess., at 1080 (1937) (Statement of Prof. Hudson Hastings).

such wages lower than the minimum wage applicable under [the law] and for such period as shall be fixed in such certificates.”⁷

The FLSA’s requirements for workers with disabilities have changed through the years, with Congress going back and forth on whether to impose a floor on the wages of those workers who were not entitled to be paid minimum wage.⁸ Congress ultimately resolved the matter in 1986 by eliminating any floor on the wages of people with disabilities who are not entitled to earn the minimum wage.⁹ Under Section 14(c) as currently worded, the wages of individuals with disabilities who are not entitled to earn the minimum wage must simply be “commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work,” and “related to the individual’s productivity.”¹⁰

Although any employer could in theory pay a below-minimum wage to an employee with a disability who meets the Section 14(c) qualifications, in practice the overwhelming majority of workers with disabilities who are paid below-minimum wages work in sheltered workshops (what their operators now call “center-based” employment programs). A Government Accountability Office survey found that “[w]ork centers employed about 95

⁷ Pub. L. No. 75-718, § 14, 52 Stat. 1060 (June 25, 1938).

⁸ See generally Congressional Research Service, *supra* note 4, at 6-28.

⁹ Pub. L. No. 99-486, 100 Stat. 1229 (Oct. 16, 1986).

¹⁰ 29 U.S.C. § 214(c)(1).

percent of all 14(c) workers.”¹¹ Indeed, President Roosevelt originally exempted workers with disabilities from the NRA’s minimum wage codes in 1934 in deference to concerns expressed by sheltered workshops, who urged that they could not afford to pay their workers market wages. But there were comparatively few sheltered workshops in the United States in 1934—about seventy workshops for blind people, less than sixty Goodwill Industries, and a handful of others.¹² Today, fuelled by the FLSA exemption and various federal laws that subsidize them directly—most notably the Javits-Wagner-O’Day Act, which was originally adopted in 1938 and requires the government to purchase certain goods from sheltered workshops—there are more than 2,500 employers (the overwhelming majority of which are sheltered workshops) certified to pay more than 350,000 employees less than minimum wage under Section 14(c).¹³

Section 14(c) Discriminates Against People with Disabilities

It is an obvious point, but it bears emphasis: Section 14(c) is, on its face, discriminatory. The law singles out what it calls “[h]andicapped workers”—workers “whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury”—and denies them the minimum

¹¹ Gen. Accounting Off., Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight 9 (2001).

¹² See Nathan Nelson, Workshops for the Handicapped in the United States: An Historical and Developmental Perspective 26-42 (1971)

¹³ Frederic K. Schroeder, No More Subminimum Wages: The Time is Now!, speech delivered at the annual convention of the National Federation of the Blind, Orlando, FL (July 8, 2011); see Nelson, *supra* note 12, at 29-30 (describing the role of what was then called the Wagner-O’Day Act in promoting the growth of sheltered workshops for blind people).

wage guarantee to which all workers are presumptively entitled.¹⁴ The law does not authorize below-minimum wages for all less-productive workers—only those who have disabilities. And although the FLSA also authorizes below-minimum wages for learners, apprentices, messengers, and students in Section 14(a) and (b),¹⁵ Section 14(c) is different in kind from those provisions. Section 14(a) and (b) makes people eligible for below-minimum wages because they perform a particular job (messengers) or are at a particular stage in their careers (learners, apprentices, students). Section 14(c), by contrast, denies people the guarantee of a minimum wage for potentially any job, and at any point in their career, based on their own disability status—a status that can be lifelong.

In the post-ADA world, such discrimination demands justification. The following section discusses the three possible justifications for Section 14(c) and finds them wanting.

The Failure of the Justifications for Section 14(c)'s Discrimination

Encouraging Open-Market Employers to Hire People with Disabilities?

On its face, Section 14(c) suggests that its purpose is to ensure that open-market employers are not discouraged from hiring workers with disabilities by the requirement to pay them a minimum wage. Thus, the

¹⁴ 29 U.S.C. § 214(c).

¹⁵ 29 U.S.C. § 214(a), (b).

statute provides that the Secretary of Labor may authorize below-minimum wages for people with disabilities “whose earning or productive capacity is impaired” to “prevent curtailment of [their] opportunities for employment.”¹⁶ Recall that, during the hearings on the original Fair Labor Standards Act, Professor Hastings of Yale expressed the concern that the minimum wage would deter businesses from hiring workers who are “subnormal in their physical or mental capacities.”

The premise of this justification is that, for a significant number of people with disabilities, there are no reasonable accommodations that will make it worth the while of open-market employers to hire them. Whatever one thinks about the validity of that premise—and Congress concluded when it adopted the ADA that it is often stereotypes, and not facts, that lead employers to believe that people with disabilities cannot be sufficiently productive—the evidence is clear that a below-minimum wage is not an effective strategy for encouraging open-market employers to hire people with disabilities. Rather, Section 14(c) has simply served as a subsidy to sheltered workshops. Recall that only about five percent of individuals receiving below-minimum wages under Section 14(c) work for open-market employers. The vast, overwhelming majority work for sheltered workshops. Section 14(c) cannot be justified as a policy to increase open-market employment opportunities for people with disabilities.

¹⁶ 29 U.S.C. § 214(c)(1).

Preparing People with Disabilities for Open-Market Employment?

Perhaps, however, Section 14(c) can be justified as giving people with disabilities the opportunity to learn key job skills before going on the open job market. This justification certainly *seems* more persuasive than the suggestion that open-market employers will hire people with disabilities at below-minimum wages. It at least takes account of the fact that the overwhelming majority of employees certified under Section 14(c) work in sheltered programs. And it makes Section 14(c) seem more congruent with the other subminimum wage provisions of Section 14 of the FLSA. Section 14's provisions for learners, apprentices, and students offer a temporary opportunity for individuals to receive training at the start of their careers. Perhaps Section 14(c), as well offers merely a temporary jump-start to a career in the open labor market. As Professor Blanck and his colleagues observed, "[a]lthough serving a dual purpose, sheltered workshops historically were considered a means for individuals with disabilities to learn vocational skills necessary to obtain integrated employment."¹⁷

But this justification does not fit the facts, either. Most individuals in sheltered workshops will not move to competitive employment. To the contrary, as University of California law and political science Professor Jacobus tenBroek argued many years ago, sheltered workshops are often

¹⁷ Peter Blanck, Helen A. Schartz & Kevin M. Schartz, *Labor Force Participation and Income of Individuals with Disabilities in Sheltered and Competitive Employment: Cross-Sectional and Longitudinal Analyses of Seven States During the 1980s and 1990s*, 44 Wm. & Mary L. Rev. 1029, 1044 (2003).

“terminal places of employment in which so-called unemployable may find a drudge’s niche at the workbench.”¹⁸ Far more recently, Dartmouth Medical School Professor Gary Bond wrote that “[t]he ineffectiveness of sheltered workshops for helping individuals progress to competitive employment is well established.”¹⁹ In the words of Professors Stephen Murphy and Patricia Rogan, “[s]heltered employment has been shown to be a much better medium for preparing people to continue sheltered work than to begin competitive work.”²⁰ Troublingly, empirical evidence suggests that large numbers of the individuals who *stay* in sheltered workshops have at least as strong daily living skills as those who *leave* the workshops for open-market employment.²¹

Sheltered workshops, subsidized by Section 14(c), do a poor job of training people with disabilities for competitive employment. Perhaps surprisingly, many workshops are not set up to provide real, job-relevant skills. Once again, Professor tenBroek well explained the dynamic half a century ago: “Because of their customary role as sheltered (i.e., segregated, covered, and noncompetitive) employment retreats, the social and psychological environment of the workshops is often not conducive to the

¹⁸ Jacobus tenBroek, *The Character and Function of Sheltered Workshops*, available at <http://www.blind.net/resources/employment/the-character-and-function-of-sheltered-workshops.html> (originally published 1960).

¹⁹ Gary R. Bond, *Supported Employment: Evidence for an Evidence-Based Practice*, 27 *Psychiatric Rehab. J.* 345, 353 (2004).

²⁰ Stephen T. Murphy & Patricia M. Rogan, *Closing the Shop: Conversion from Sheltered to Integrated Work* 20 (1995).

²¹ See Blanck, Schartz & Schartz, *supra* note 17, at 1088-1089 (“For instance, in Pennsylvania, more than half (56%) of individuals who remained in sheltered work at Time 2 (Stayers) had Adaptive Behavior Scale scores greater than 90 on a scale of 100. In comparison, somewhat less than half (44%) of individuals who progressed to integrated employment at Time 2 (Improvers) had Adaptive Behavior Scale scores in the range above 90.”).

paramount objective of vocational rehabilitation: that of restoring the disabled person to a vocational status of normality and equality.”²² Sheltered workshops often rely on outdated, non-mechanized production processes—which are poor vehicles for developing the skills real employers need in the open-market economy. According to Professors Murphy and Rogan, “a host of studies” demonstrates “that sheltered employment hinders people from learning appropriate social and vocational behaviors because they have been isolated from competitive standards regarding work training, modern equipment, job requirements, behavioral expectations, and social relations.”²³

Fundamentally, Section 14(c)—and the sheltered workshop system it undergirds—rests on the proposition that people with disabilities should have to provide their ability and inclination to work in whatever make-work jobs the workshops create before moving into the world of competitive employment. “Make-work” is not an exaggeration. Professor Susan Stefan describes sheltered workshop workers “folding and unfolding newspapers.”²⁴ The National Disability Rights Network describes an individual whose job was to count rocks as he moved them from one box to another.²⁵ Even the jobs in sheltered workshops that do perform some economic function are

²² tenBroek, *supra* note 18.

²³ Murphy & Rogan, *supra* note 20, at 19. See also Alberto Migliore, *Sheltered Workshops*, in International Encyc. of Rehab. (J.H. Stone & M. Blouin, eds., 2010) (“Even when work is the main focus of sheltered workshops, the work environment tends to be different from the one in mainstream businesses.”), *available at* <http://cirrie.buffalo.edu/encyclopedia/en/article/136/>.

²⁴ Susan Stefan, *Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings*, 26 Ga. St. U. L. Rev. 875, 877 (2010).

²⁵ National Disability Rights Network, *Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work* 22 (2011).

extremely menial and unlikely to develop real work skills. The GAO described the jobs that are generally available at these workshops:

Assembly jobs generally involve uncomplicated one- or two-step processes that are mainly performed by hand. For example, 14(c) workers at a work center in Illinois that we visited assembled small plastic automobile parts, while 14(c) workers at a New York work center snapped together plastic pieces to assemble a lint remover. The service-related jobs involved basic tasks, such as mopping floors and picking up trash. For example, 14(c) workers from a California work center maintained restrooms at public beaches under contracts with local city governments.²⁶

Worse, jobs like these are often assigned without any connection to the abilities and background of the individuals assigned them. Former federal rehabilitation commissioner Fredric Schroeder described a woman he met who had blindness and cerebral palsy. Even though she had a college degree, the sheltered workshop in which she worked assigned her a job assembling heavy rubber mats; paid by the piece, she earned *three dollars per week*.²⁷ It should be no surprise that such “jobs” do not prepare sheltered workshop employees to compete on the open labor market.

The Chance to Earn At Least Something?

One occasionally hears that even if Section 14(c) does not assist people with disabilities in acquiring open-market jobs, but instead simply authorizes

²⁶ Gen. Accounting Off., *supra* note 11, at 10.

²⁷ Schroeder, *supra* note 13. See also Stefan, *supra* note 24, at 875 (quoting an interview with a sheltered workshop worker: “Several years ago, I was a client of Georgia Vocational Rehabilitation . . . at [Atlanta Rehabilitation Center]. I was put in a sheltered workshop and asked to put a plastic cover on two bottles, eight hours a day, for three weeks to show my readiness to work. I balked and the counselor said, ‘Oh, so you don’t really want to work. I had two other Ph.D.s who didn’t want to work.’”).

payment of a below-minimum wage to people who will work in sheltered workshops for life, the statute is still justified. At least, the argument goes, these individuals are earning *something*, which the law requires to be commensurate with the wages paid to nondisabled workers and related to their productivity.²⁸ Moreover, the statute contains a complaint process under which a person who disagrees with the below-minimum wage set by his or her employer can appeal to the Secretary of Labor.²⁹ Shouldn't this be enough to ensure that people who receive below-minimum wages under Section 14(c) really are not sufficiently productive to earn a minimum wage?

No. As former National Federation of the Blind President Kenneth Jernigan testified in congressional hearings in 1980, the entire structure of Section 14(c) stacks the deck against ensuring that wages adequately reflect the abilities of a worker with a disability. That law, he said, “set[s] up a class of workers who are blind or handicapped and thus forc[es] the members of this class to justify every penny of their paychecks by means of productivity ratings while working under conditions and with equipment over which they have no control.”³⁰ The outdated and non-individualized setups of many sheltered workshops, discussed in the previous section, will depress the *observed* productivity of their workers, while saying very little about what a worker's skills would be in a more modern workplace (and one that sought to

²⁸ 29 U.S.C. § 214(c)(1).

²⁹ 29 U.S.C. § 214(c)(5).

³⁰ *Oversight Hearings on Section 14(C) of the Fair Labor Standards Act: Hearings before the Subcomm. on Labor Standards of the House Comm. on Educ. and Labor*, 96th Cong., 2d Sess. 47 (1980).

provide an individualized fit between worker and job). As a Congressional Research Service report demonstrated, it is difficult if not impossible to measure a worker's productivity objectively in such a context.³¹

This situation is an invitation to paying individuals with disabilities in sheltered workshops less than they deserve under the law, and significantly less than they produce for their managers. Where basically all of the relevant information is in the hands of the sheltered workshop manager, the statutory appeals process can provide little counterweight. And the process itself is fatally flawed—because it does not provide for attorney's fees or opt-out classes—and is therefore rarely invoked.³²

Conclusion

The problem of non-employment of people with disabilities is an important one. But Section 14(c)'s subminimum wage provision is not the way to solve that problem. Section 14(c) discriminates against people with disabilities. It has not served its original purpose of ensuring that open-market employers hire people with disabilities. Instead, it has simply provided a subsidy for sheltered workshops, which have done a poor job of preparing their workers for open-market employment, and which pay wages that cannot reliably be said to be related to their workers' productivity.

³¹ See Congressional Research Service, *supra* note 4, at 20.

³² See *id.* at 26-28.

Section 14(c) is an anomaly in the post-ADA world, and Congress should repeal it.

LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: S. 2020, Keeping All Students Safe Act

BILL SUMMARY: This bill would prohibit the use of seclusion in locked and unattended rooms/enclosures, prohibit the use of mechanical, chemical, and physical restraints that restrict breathing, and prohibit aversive behavioral interventions that compromise health and safety. The bill would also:

- prohibit the use of physical restraints except for emergency situations;
- prohibit the use of physical restraints that inhibit a student's primary means of communication;
- prohibit the use of seclusions and/or restraints in a student's individual education plan (IEP) or any other behavioral plan;
- call for states to promote preventative programming to reduce the use of restraints;
- call for states to collect data on the occurrence of seclusions and restraints;
- call for schools to conduct a debriefing with parents and staff after a restraint is used and plan for positive behavioral interventions that will prevent the use of restraints with the student in the future; and,
- establish a state grant program to enhance the State's ability to promote, within its LEAs, preventative programming and training for school personnel.

BACKGROUND: According to a 2009 Government Accountability Office (GAO) study, restraints and seclusion have resulted in physical injury and psychological trauma to thousands of students in public and private schools throughout the country, many of them students with disabilities. Estimates from the GAO are that over 200 students have died due to seclusion and restraints being used in schools over the past five years.

Disability Rights California has released two reports on restraints and seclusion, Restraints and Seclusion in Public Schools: A Failing Grade and The Lethal Hazard of Prone Restraint: Positional Asphyxiation. These reports make it evident that these practices are often employed with students despite their significant potential for harm.

ANALYSIS/DISCUSSION: By limiting the use of seclusion and restraint, S. 2020 significantly reduces the risks students may incur. Some may argue that this bill does not go far enough and should eliminate the practice; however federal (HR 4247 and S. 2860) and state (AB 1538, Ma) bills that sought to do so in the last two years have failed to pass the legislative process.

S. 2020 would promote the development of effective intervention and prevention practices, emphasize de-escalation, conflict management, and evidence-based practices shown to be effective in preventing physical restraint; and mandate the use of data-based decision-making and evidence-based positive behavioral interventions and supports.

Many families have reported that they have not been informed by schools of incidents regarding restraint and seclusion. This bill directly addresses this issue by calling for schools to conduct a debriefing with parents and staff after a restraint is used and to make plans to avoid their use in the future.

The following organizations support S. 2020: Easter Seals, United Cerebral Palsy, the Arc of the United States, the National Disabilities Rights Network, and the Council of Parent and Attorney Advocates (COPAA).

COUNCIL STRATEGIC PLAN OBJECTIVE: The Council will take a position on proposed state and federal legislation and proposed regulations that impact people with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

PRIOR COUNCIL ACTIVITY: The Council has previously supported HR 4247 (Preventing Harmful Restraints and Seclusion in the Schools Act) and S. 2860 (Keeping All Students Safe Act). In those bills, some amendments were considered that the Council opposed (to permit the planned use of seclusion and restraints to be included in the IEP and to exempt private schools from the bills' provisions). S. 2020 does not include either of these provisions at the time of this writing.

STAFF RECOMMENDATION: Support S. 2020.

ATTACHMENTS: S. 2020; Harkin press release; and advocates sign on letter

PREPARED: Christofer Arroyo, January 4, 2012

112TH CONGRESS
1ST SESSION

S. 2020

To protect all school children against harmful and life-threatening seclusion and restraint practices.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2011

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To protect all school children against harmful and life-threatening seclusion and restraint practices.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Keeping All Students
5 Safe Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **APPLICABLE PROGRAM.**—The term “appli-
9 cable program” has the meaning given the term in

1 section 400(c)(1) of the General Education Provi-
 2 sions Act (20 U.S.C. 1221(c)(1)).

3 (2) CHEMICAL RESTRAINT.—The term “chem-
 4 ical restraint” means a drug or medication used on
 5 a student to control behavior or restrict freedom of
 6 movement that is not—

7 (A) prescribed by a licensed physician, or
 8 other qualified health professional acting under
 9 the scope of the professional’s authority under
 10 State law, for the standard treatment of a stu-
 11 dent’s medical or psychiatric condition; and

12 (B) administered as prescribed by the li-
 13 censed physician or other qualified health pro-
 14 fessional acting under the scope of the profes-
 15 sional’s authority under State law.

16 (3) ESEA DEFINITIONS.—The terms—

17 (A) “Department”, “educational service
 18 agency”, “elementary school”, “local edu-
 19 cational agency”, “parent”, “secondary school”,
 20 “State”, and “State educational agency” have
 21 the meanings given such terms in section 9101
 22 of the Elementary and Secondary Education
 23 Act of 1965 (20 U.S.C. 7801); and

1 (B) “school resource officer” and “school
2 personnel” have the meanings given such terms
3 in section 4151 of such Act (20 U.S.C. 7161).

4 (4) FEDERAL FINANCIAL ASSISTANCE.—The
5 term “Federal financial assistance” means any
6 grant, loan, contract (other than a procurement con-
7 tract or a contract of insurance or guaranty), or any
8 other arrangement by which the Department pro-
9 vides or otherwise makes available assistance in the
10 form of—

11 (A) funds;

12 (B) services of Federal personnel; or

13 (C) real and personal property or any in-
14 terest in or use of such property, including—

15 (i) transfers or leases of such property
16 for less than fair market value or for re-
17 duced consideration; and

18 (ii) proceeds from a subsequent trans-
19 fer or lease of such property if the Federal
20 share of its fair market value is not re-
21 turned to the Federal Government.

22 (5) FREE APPROPRIATE PUBLIC EDUCATION.—
23 For those students eligible for special education and
24 related services under the Individuals with Disabil-
25 ities Education Act (20 U.S.C. 1400 et seq.), the

1 term “free appropriate public education” has the
 2 meaning given the term in section 602 of such Act
 3 (20 U.S.C. 1401).

4 (6) MECHANICAL RESTRAINT.—The term “me-
 5 chanical restraint”—

6 (A) has the meaning given the term in sec-
 7 tion 595(d)(1) of the Public Health Service Act
 8 (42 U.S.C. 290jj(d)(1)), except that the mean-
 9 ing shall be applied by substituting “student’s”
 10 for “resident’s”; and

11 (B) does not mean devices used by trained
 12 school personnel, or used by a student, for the
 13 specific and approved therapeutic or safety pur-
 14 poses for which such devices were designed and,
 15 if applicable, prescribed, including—

16 (i) restraints for medical immobiliza-
 17 tion;

18 (ii) adaptive devices or mechanical
 19 supports used to allow greater freedom of
 20 mobility than would be possible without the
 21 use of such devices or mechanical supports;
 22 or

23 (iii) vehicle safety restraints when
 24 used as intended during the transport of a
 25 student in a moving vehicle.

1 (7) PHYSICAL ESCORT.—The term “physical es-
 2 cort” means the temporary touching or holding of
 3 the hand, wrist, arm, shoulder, waist, hip, or back
 4 for the purpose of inducing a student to move to a
 5 safe location.

6 (8) PHYSICAL RESTRAINT.—The term “physical
 7 restraint” means a personal restriction that immo-
 8 bilizes or reduces the ability of an individual to move
 9 the individual’s arms, legs, body, or head freely.
 10 Such term does not include a physical escort, me-
 11 chanical restraint, or chemical restraint.

12 (9) POSITIVE BEHAVIORAL INTERVENTIONS
 13 AND SUPPORTS.—The term “positive behavioral
 14 interventions and supports”—

15 (A) means a school-wide systematic ap-
 16 proach to embed evidence-based practices and
 17 data-driven decisionmaking to improve school
 18 climate and culture in order to achieve im-
 19 proved academic and social outcomes, and in-
 20 crease learning for all students, including those
 21 with the most complex and intensive behavioral
 22 needs; and

23 (B) encompasses a range of systemic and
 24 individualized positive strategies to reinforce de-
 25 sired behaviors, diminish reoccurrence of chal-

1 lenging behaviors, and teach appropriate behav-
2 iors to students.

3 (10) PROTECTION AND ADVOCACY SYSTEM.—
4 The term “protection and advocacy system” means
5 a protection and advocacy system established under
6 subtitle C of title I of the Developmental Disabilities
7 Assistance and Bill of Rights Act of 2000 (42
8 U.S.C. 15041 et seq.).

9 (11) SECLUSION.—The term “seclusion” means
10 the isolation of a student in a room, enclosure, or
11 space that is—

12 (A) locked; or

13 (B) unlocked and the student is prevented
14 from leaving.

15 (12) SECRETARY.—The term “Secretary”
16 means the Secretary of Education, and, where ap-
17 propriate, the Secretary of the Interior and the Sec-
18 retary of Defense.

19 (13) SERIOUS BODILY INJURY.—The term “se-
20 rious bodily injury” has the meaning given the term
21 in section 1365(h) of title 18, United States Code.

22 (14) STATE-APPROVED CRISIS INTERVENTION
23 TRAINING PROGRAM.—The term “State-approved
24 crisis intervention training program” means a train-
25 ing program approved by a State that, at a min-

1 imum, provides training in evidence-based practices
 2 shown to be effective—

3 (A) in the prevention of the use of physical
 4 restraint;

5 (B) in keeping both school personnel and
 6 students safe in imposing physical restraint in
 7 a manner consistent with this Act;

8 (C) in the use of data-based decision-
 9 making and evidence-based positive behavioral
 10 interventions and supports, safe physical escort,
 11 conflict prevention, behavioral antecedents,
 12 functional behavioral assessments, de-escalation
 13 of challenging behaviors, and conflict manage-
 14 ment;

15 (D) in first aid, including the signs of
 16 medical distress, and cardiopulmonary resus-
 17 citation; and

18 (E) certification for school personnel in the
 19 practices and skills described in subparagraphs
 20 (A) through (D), which shall be required to be
 21 renewed on a periodic basis.

22 (15) STUDENT.—The term “student” means a
 23 student who—

24 (A) is enrolled in a public school;

1 (B) is enrolled in a private school and is
 2 receiving a free appropriate public education at
 3 the school under subparagraph (B) or (C) of
 4 section 612(a)(10) of the Individuals with Dis-
 5 abilities Education Act (20 U.S.C.
 6 1412(a)(10)(B), (C));

7 (C) is enrolled in a Head Start or Early
 8 Head Start program supported under the Head
 9 Start Act (42 U.S.C. 9831); or

10 (D) receives services under section 619 or
 11 part C of the Individuals with Disabilities Edu-
 12 cation Act (20 U.S.C. 1419, 1431 et seq.).

13 **SEC. 3. PURPOSE.**

14 The purposes of this Act are—

15 (1) to promote the development of effective
 16 intervention and prevention practices that do not use
 17 restraints and seclusion;

18 (2) to protect all students from physical or
 19 mental abuse, aversive behavioral interventions that
 20 compromise health and safety, and any restraint im-
 21 posed for purposes of coercion, discipline or conven-
 22 ience, or as a substitute for appropriate educational
 23 or positive behavioral interventions and supports;

24 (3) to ensure that staff are safe from the harm
 25 that can occur from inexpertly using restraints; and

1 (4) to ensure the safety of all students and
 2 school personnel and promote positive school culture
 3 and climate.

4 **SEC. 4. MINIMUM STANDARDS; RULE OF CONSTRUCTION.**

5 Each State and local educational agency receiving
 6 Federal financial assistance shall have in place policies
 7 that are consistent with the following:

8 (1) PROHIBITION OF CERTAIN ACTION.—School
 9 personnel, contractors, and resource officers are pro-
 10 hibited from imposing on any student—

11 (A) seclusion;

12 (B) mechanical restraint;

13 (C) chemical restraint;

14 (D) aversive behavioral interventions that
 15 compromise health and safety;

16 (E) physical restraint that is life-threat-
 17 ening, including physical restraint that restricts
 18 breathing; and

19 (F) physical restraint if contraindicated
 20 based on the student's disability, health care
 21 needs, or medical or psychiatric condition, as
 22 documented in a health care directive or med-
 23 ical management plan, a behavior intervention
 24 plan, an individualized education program or an
 25 individualized family service plan (as defined in

1 section 602 of the Individuals with Disabilities
 2 Education Act (20 U.S.C. 1401)), or plan de-
 3 veloped pursuant to section 504 of the Rehabili-
 4 tation Act of 1973 (29 U.S.C. 794), or other
 5 relevant record made available to the State or
 6 local educational agency.

7 (2) PHYSICAL RESTRAINT.—

8 (A) IN GENERAL.—Physical restraint may
 9 only be implemented if—

10 (i) the student's behavior poses an im-
 11 mediate danger of serious bodily injury to
 12 self or others;

13 (ii) the physical restraint does not
 14 interfere with the student's ability to com-
 15 municate in the student's primary lan-
 16 guage or mode of communication; and

17 (iii) less restrictive interventions have
 18 been ineffective in stopping the immediate
 19 danger of serious bodily injury to the stu-
 20 dent or others, except in a case of a rare
 21 and clearly unavoidable emergency cir-
 22 cumstance posing immediate danger of se-
 23 rious bodily injury.

24 (B) LEAST AMOUNT OF FORCE NEC-
 25 ESSARY.—When implementing a physical re-

1 strait, staff shall use only the amount of force
 2 necessary to protect the student or others from
 3 the threatened injury.

4 (C) END OF PHYSICAL RESTRAINT.—The
 5 use of physical restraint shall end when—

6 (i) a medical condition occurs putting
 7 the student at risk of harm;

8 (ii) the student's behavior no longer
 9 poses an immediate danger of serious bod-
 10 ily injury to the student or others; or

11 (iii) less restrictive interventions
 12 would be effective in stopping such imme-
 13 diate danger of serious bodily injury.

14 (D) QUALIFICATIONS OF INDIVIDUALS EN-
 15 GAGING IN PHYSICAL RESTRAINT.—School per-
 16 sonnel imposing physical restraint in accordance
 17 with this subsection shall—

18 (i) be trained and certified by a State-
 19 approved crisis intervention training pro-
 20 gram, except in the case of rare and clearly
 21 unavoidable emergency circumstances when
 22 school personnel trained and certified are
 23 not immediately available due to the un-
 24 foreseeable nature of the emergency cir-
 25 cumstance;

- 1 (ii) engage in continuous face-to-face
 2 monitoring of the student; and
 3 (iii) be trained in State and school
 4 policies and procedures regarding restraint
 5 and seclusion.

6 (E) PROHIBITION ON USE OF PHYSICAL
 7 RESTRAINT AS PLANNED INTERVENTION.—The
 8 use of physical restraints as a planned interven-
 9 tion shall not be written into a student’s edu-
 10 cation plan, individual safety plan, plan devel-
 11 oped pursuant to section 504 of the Rehabilita-
 12 tion Act of 1973 (29 U.S.C. 794), individual-
 13 ized education program or individualized family
 14 service plan (as defined in section 602 of the
 15 Individuals with Disabilities Education Act (20
 16 U.S.C. 1401)), or any other planning document
 17 for an individual student.

18 (3) OTHER POLICIES.—

19 (A) IN GENERAL.—The State or local edu-
 20 cational agency, and each school and edu-
 21 cational program served by the State or local
 22 educational agency shall—

- 23 (i) establish policies and procedures
 24 that ensure school personnel and parents,
 25 including private school personnel and par-

1 ents, are aware of the State, local edu-
 2 cational agency, and school's policies and
 3 procedures regarding seclusion and re-
 4 straint;

5 (ii) establish policies and procedures
 6 to keep all students, including students
 7 with the most complex and intensive be-
 8 havioral needs, and school personnel safe;

9 (iii) establish policies and procedures
 10 for planning for the appropriate use of re-
 11 straint in crisis situations in accordance
 12 with this Act by a team of professionals
 13 trained in accordance with a State-ap-
 14 proved crisis intervention training pro-
 15 gram; and

16 (iv) establish policies and procedures
 17 to be followed after each incident involving
 18 the imposition of physical restraint upon a
 19 student, including—

20 (I) procedures to provide to the
 21 parent of the student, with respect to
 22 each such incident—

23 (aa) a verbal or electronic
 24 communication on the same day
 25 as each such incident; and

1 (bb) within 24 hours of each
2 such incident, written notifica-
3 tion; and

4 (II) after the imposition of phys-
5 ical restraint upon a student, proce-
6 dures to ensure that all school per-
7 sonnel in the proximity of the student
8 immediately before and during the
9 time of the restraint, the parent, the
10 student, appropriate supervisory and
11 administrative staff, and appropriate
12 IEP team members, participate in a
13 debriefing session.

14 (B) DEBRIEFING SESSION.—

15 (i) IN GENERAL.—The debriefing ses-
16 sion described in subparagraph (A)(iv)(II)
17 shall occur as soon as practicable, but not
18 later than 5 school days following the im-
19 position of physical restraint unless it is
20 delayed by written mutual agreement of
21 the parent and school. Parents shall retain
22 their full legal rights for children under the
23 age of majority concerning participation in
24 the debriefing or other matters.

(ii) CONTENT OF SESSION.—The debriefing session described in subparagraph (A)(iv)(II) shall include—

(I) identification of antecedents to the physical restraint;

(II) consideration of relevant information in the student's records, and such information from teachers, other professionals, the parent, and student;

(III) planning to prevent and reduce reoccurrence of the use of physical restraint, including consideration of the results of any functional behavioral assessments, whether positive behavior plans were implemented with fidelity, recommendations of appropriate positive behavioral interventions and supports to assist personnel responsible for the student's educational plan, the individualized education program for the student, if applicable, and plans providing for reasonable accommodations under section 504 of

1 the Rehabilitation Act of 1973 (29
2 U.S.C. 794);

3 (IV) a plan to have a functional
4 behavioral assessment conducted, re-
5 viewed, or revised by qualified profes-
6 sionals, the parent, and the student;
7 and

8 (V) for any student not identified
9 as eligible to receive accommodations
10 under section 504 of the Rehabilita-
11 tion Act of 1973 (29 U.S.C. 794) or
12 services under the Individuals with
13 Disabilities Education Act (20 U.S.C.
14 1400 et seq.), evidence of such a re-
15 ferral or documentation of the basis
16 for declining to refer the student.

17 (iii) COMMUNICATION BY THE STU-
18 DENT.—When a student attends a debrief-
19 ing session described in subparagraph
20 (A)(iv)(II), information communicated by
21 the student may not be used against the
22 student in any disciplinary, criminal, or
23 civil investigation or proceeding.

24 (4) NOTIFICATION IN WRITING ON DEATH OR
25 BODILY INJURY.—In a case in which serious bodily

1 injury or death of a student occurs in conjunction
 2 with the use of physical restraint or any intervention
 3 used to control behavior, there are procedures to no-
 4 tify, in writing, within 24 hours after such injury or
 5 death occurs—

6 (A) the State educational agency and local
 7 educational agency;

8 (B) local law enforcement; and

9 (C) a protection and advocacy system, in
 10 the case of a student who is eligible for services
 11 from the protection and advocacy system.

12 (5) PROHIBITION AGAINST RETALIATION.—The
 13 State or local educational agency, each school and
 14 educational program served by the State or local
 15 educational agency, and school personnel of such
 16 school or program shall not retaliate against any
 17 person for having—

18 (A) reported a violation of this section or
 19 Federal or State regulations or policies promul-
 20 gated to carry out this section; or

21 (B) provided information regarding a viola-
 22 tion of this section or Federal or State regula-
 23 tions or policies promulgated to carry out this
 24 section.

1 **SEC. 5. INTERACTION.**

2 (a) **RULE OF CONSTRUCTION.**—Nothing in this Act
 3 shall be construed to restrict or limit, or allow the Sec-
 4 retary to restrict or limit, any other rights or remedies
 5 otherwise available to students or parents under Federal
 6 or State law (including regulations) or to restrict or limit
 7 stronger restrictions on the use of restraint, seclusion, or
 8 aversives in Federal or State law (including regulations)
 9 or in State policies.

10 (b) **DENIAL OF A FREE APPROPRIATE PUBLIC EDU-**
 11 **CATION.**—Failure to meet the minimum standards of this
 12 Act as applied to an individual child eligible for accom-
 13 modations developed pursuant to section 504 of the Reha-
 14 bilitation Act of 1973 (29 U.S.C. 794) or for education
 15 or related services under the Individuals with Disabilities
 16 Education Act (20 U.S.C. 1400 et seq.) shall constitute
 17 a denial of a free appropriate public education.

18 **SEC. 6. REPORT REQUIREMENTS.**

19 (a) **IN GENERAL.**—Each State educational agency
 20 shall (in compliance with the requirements of section 444
 21 of the General Education Provisions Act (commonly
 22 known as the “Family Educational Rights and Privacy
 23 Act of 1974”) (20 U.S.C. 1232g)) prepare and submit to
 24 the Secretary, and make available to the public, a report
 25 with respect to each local educational agency, and each
 26 school not under the jurisdiction of a local educational

1 agency, located in the same State as such State edu-
 2 cational agency that includes the following information:

3 (1) The total number of incidents in which
 4 physical restraint was imposed upon a student in the
 5 preceding full academic year.

6 (2) The information described in paragraph (1)
 7 shall be disaggregated—

8 (A) by the total number of incidents in
 9 which physical restraint was imposed upon a
 10 student—

11 (i) that resulted in injury to students
 12 or school personnel, or both;

13 (ii) that resulted in death; and

14 (iii) in which the school personnel im-
 15 posing physical restraint were not trained
 16 and certified as described in section
 17 4(2)(D)(i); and

18 (B) by the demographic characteristics of
 19 all students upon whom physical restraint was
 20 imposed, including—

21 (i) the subcategories identified in sec-
 22 tion 1111(h)(1)(C)(i) of the Elementary
 23 and Secondary Education Act of 1965 (20
 24 U.S.C. 6311(h)(1)(C)(i));

25 (ii) age; and

1 (iii) disability category.

2 (b) UNDUPLICATED COUNT; EXCEPTION.—The
3 disaggregation required under subsection (a) shall—

4 (1) be carried out in a manner to ensure an
5 unduplicated count of the total number of incidents
6 in the preceding full academic year in which physical
7 restraint was imposed upon a student; and

8 (2) not be required in a case in which the num-
9 ber of students in a category would reveal personally
10 identifiable information about an individual student.

11 **SEC. 7. GRANT AUTHORITY.**

12 (a) IN GENERAL.—From the amount appropriated
13 under section 9, the Secretary may award grants to State
14 educational agencies to assist in—

15 (1) establishing, implementing, and enforcing
16 the policies and procedures to meet the minimum
17 standards described in this Act;

18 (2) improving State and local capacity to collect
19 and analyze data related to physical restraint; and

20 (3) improving school climate and culture by im-
21 plementing school-wide positive behavioral interven-
22 tions and supports.

23 (b) DURATION OF GRANT.—A grant under this sec-
24 tion shall be awarded to a State educational agency for
25 a 3-year period.

1 (c) APPLICATION.—Each State educational agency
2 desiring a grant under this section shall submit an appli-
3 cation to the Secretary at such time, in such manner, and
4 accompanied by such information as the Secretary may
5 require, including information on how the State edu-
6 cational agency will target resources to schools and local
7 educational agencies in need of assistance related to pre-
8 venting and reducing physical restraint.

9 (d) AUTHORITY TO MAKE SUBGRANTS.—

10 (1) IN GENERAL.—A State educational agency
11 receiving a grant under this section may use such
12 grant funds to award subgrants, on a competitive
13 basis, to local educational agencies.

14 (2) APPLICATION.—A local educational agency
15 desiring to receive a subgrant under this section
16 shall submit an application to the applicable State
17 educational agency at such time, in such manner,
18 and containing such information as the State edu-
19 cational agency may require.

20 (e) PRIVATE SCHOOL PARTICIPATION.—

21 (1) IN GENERAL.—A State educational agency
22 receiving grant funds under this section shall, after
23 timely and meaningful consultation with appropriate
24 private school officials, ensure that private school

1 personnel can participate, on an equitable basis, in
 2 activities supported by grant or subgrant funds.

3 (2) PUBLIC CONTROL OF FUNDS.—The control
 4 of funds provided under this section, and title to ma-
 5 terials, equipment, and property with such funds,
 6 shall be in a public agency and a public agency shall
 7 administer such funds, materials, equipment, and
 8 property.

9 (f) REQUIRED ACTIVITIES.—A State educational
 10 agency receiving a grant, or a local educational agency re-
 11 ceiving a subgrant, under this section shall use such grant
 12 or subgrant funds to carry out the following:

13 (1) Researching, developing, implementing, and
 14 evaluating evidence-based strategies, policies, and
 15 procedures to reduce and prevent physical restraint
 16 in schools, consistent with the minimum standards
 17 described in this Act.

18 (2) Providing professional development, train-
 19 ing, and certification for school personnel to meet
 20 such standards.

21 (g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addi-
 22 tion to the required activities described in subsection (f),
 23 a State educational agency receiving a grant, or a local
 24 educational agency receiving a subgrant, under this sec-

1 tion may use such grant or subgrant funds for 1 or more
2 of the following:

3 (1) Developing and implementing a high-quality
4 professional development and training program to
5 implement evidence-based systematic approaches to
6 school-wide positive behavioral interventions and
7 supports, including improving coaching, facilitation,
8 and training capacity for administrators, teachers,
9 specialized instructional support personnel, and
10 other staff.

11 (2) Providing technical assistance to develop
12 and implement evidence-based systematic approaches
13 to school-wide positive behavioral interventions and
14 supports, including technical assistance for data-
15 driven decisionmaking related to positive behavioral
16 interventions and supports in the classroom.

17 (3) Researching, evaluating, and disseminating
18 high-quality evidence-based programs and activities
19 that implement school-wide positive behavioral inter-
20 ventions and supports with fidelity.

21 (4) Supporting other local positive behavioral
22 interventions and supports implementation activities
23 consistent with this subsection.

1 (h) EVALUATION AND REPORT.—Each State edu-
 2 cational agency receiving a grant under this section shall,
 3 at the end of the 3-year grant period for such grant—

4 (1) evaluate the State’s progress toward the
 5 prevention and reduction of physical restraint in the
 6 schools located in the State, consistent with the min-
 7 imum standards; and

8 (2) submit to the Secretary a report on such
 9 progress.

10 **SEC. 8. ENFORCEMENT.**

11 (a) USE OF REMEDIES.—If a State educational agen-
 12 cy fails to comply with the requirements under this Act,
 13 the Secretary shall—

14 (1) withhold, in whole or in part, further pay-
 15 ments under an applicable program in accordance
 16 with section 455 of the General Education Provi-
 17 sions Act (20 U.S.C. 1234d);

18 (2) require a State or local educational agency
 19 to submit, and implement, within 1 year of such fail-
 20 ure to comply, a corrective plan of action, which may
 21 include redirection of funds received under an appli-
 22 cable program;

23 (3) issue a complaint to compel compliance of
 24 the State or local educational agency through a
 25 cease and desist order, in the same manner the Sec-

1 retary is authorized to take such action under sec-
2 tion 456 of the General Education Provisions Act
3 (20 U.S.C. 1234e); or

4 (4) refer the State to the Department of Jus-
5 tice or Department of Education Office of Civil
6 Rights for an investigation.

7 (b) CESSATION OF WITHHOLDING OF FUNDS.—
8 Whenever the Secretary determines (whether by certifi-
9 cation or other appropriate evidence) that a State or local
10 educational agency that is subject to the withholding of
11 payments under subsection (a)(1) has cured the failure
12 providing the basis for the withholding of payments, the
13 Secretary shall cease the withholding of payments with re-
14 spect to the State educational agency under such sub-
15 section.

16 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
18 as may be necessary to carry out this Act for fiscal year
19 2012 and each of the 4 succeeding fiscal years.

○

December 16, 2011 Unsubscribe Update My Profile

FOR IMMEDIATE RELEASE

Contact: Justine Sessions / Kate Cyrul

December 16, 2011 (202) 224-3254

Harkin Introduces Bill to Protect Students from Seclusion and Restraint

WASHINGTON—Today, Senator Tom Harkin (D-IA), Chairman of the Senate Health, Education, Labor and Pensions Committee, introduced the Keeping All Students Safe Act, a bill to protect students from ineffective and dangerous seclusion and restraint practices in schools.

“Every child should be educated in a supportive, caring, stimulating environment in which they are treated as an individual and provided with the tools they need to succeed,” Harkin said. “They should never be subjected to abusive or violent disciplinary strategies or left alone and unsupervised. This bill will set long-overdue standards to protect children from physical and psychological harm and ensure a safe learning environment for teachers and students alike.”

According to a 2009 Government Accountability Office (GAO) study, restraints and seclusion have resulted in physical injury and psychological trauma to thousands of students in public and private schools throughout the country, many of them students with disabilities. Estimates from the GAO are that over 200 students have died due to seclusion and restraints being used in schools over the past five years. This bill would prohibit the use of seclusion in locked and unattended rooms or enclosures, prohibit the use of mechanical and chemical restraints and physical restraints that restrict breathing, and prohibit aversive behavioral interventions that compromise health and safety. The bill would also:

- Prohibit the use of physical restraints except for emergency situations,
- Prohibit the use of physical restraints that inhibit a student’s primary means of communication
- Prohibit the use of seclusions and/or restraints in a student’s Individual Education Plan or any other behavioral plan
- Call for states to promote preventative programming to reduce the use of restraints
- Call for states to collect data on the occurrence of seclusions and restraints
- Call for schools to conduct a debriefing with parents and staff after a restraint is used and plan for positive behavioral interventions that will prevent the use of restraints with the student in the future.
- Establish a state grant program to enhance the State’s ability to promote, within its LEAs, preventative programming and training for school personnel

Organizations supporting the Keeping All Students Safe Act include Easter Seals, United Cerebral Palsy, The Arc of the United States, the National Disabilities Rights Network and the Council of Parent and Attorney Advocates.

###

PLEASE LET US KNOW IF YOUR ORGANIZATION CAN SIGN ONTO THE LETTER BELOW.

Dear Chairman Harkin:

The undersigned organizations thank you for introducing the Keeping All Students Safe Act and your unwavering commitment to the safety and welfare of our nation's children. The undersigned organizations support this legislation and pledge to work with you for its enactment. In 2009, the Government Accountability Office documented hundreds of children subjected to restraint and seclusion in school, resulting in death, injury, and psychological trauma. All too often, the victims have been children with disabilities.

The Keeping All Students Safe Act will establish needed national minimum standards to protect all school children nationwide. The bill will strengthen protections in every state.

The bill would ensure the safety of all students and school personnel and promote positive school culture and climate. The bill would promote the development of effective intervention and prevention practices, emphasize de-escalation, conflict management, and evidence-based practices shown to be effective in preventing physical restraint; and mandate the use of data-based decision-making and evidence-based positive behavioral interventions and supports.

The bill would ban seclusion and confinement of children in locked rooms or spaces from which they cannot exit. Students have died or been injured in seclusion. It will restrict physical restraint to emergencies posing a threat of serious bodily injury to self or other. Schools will no longer be able to use this dangerous technique to punish children, coerce compliance, for behavioral infractions, or as a substitute for positive behavioral support or proper educational programming. It may not be used when less restrictive measures would be effective and must end when the emergency ends. No longer will children be kept in restraint for hours. And if light force would stop the threat, staff could not use maximum force that would harm or injure the child. The bill will ban restraints that are life threatening (including those that interfere with breathing), mechanical and chemical restraints, aversives that threaten health or safety, and restraints that interfere with the ability to communicate or which would harm a child.

The bill requires that those using restraint be trained in evidence-based techniques and renew their training certifications on a regular basis, establishing a strong standard nationwide. Far too many children have been injured by untrained personnel. The bill requires that parents be notified within 24 hours that their child has been restrained. Parents must know to watch for concussions and other injuries, as well as trauma. Staff and family will debrief after restraint is used, to prevent its use in the future. States must collect data on the use of restraint and seclusion, make it available to members of the public, and use the data to minimize further use of these techniques. Such sunshine is vital. Teachers, staff, and parents who report violations of the law would be protected from retaliation. The bill will prohibit including restraint as a planned intervention in Individual Educational Programs or other individualized planning documents.

Existing laws alone have not protected students against such abuse and injury, though many do offer important protections. By creating a national floor of protection, your bill ensures that

children will be protected in every state. We thank you very much for your strong work to protect schoolchildren from abusive interventions.

Sincerely,

[INSERT LIST OF SIGN-ONS]

LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: H.R. 3356- Americans with Disabilities Act of 1990

SUMMARY: H.R. 3356-- ADA Compliance for Customer Entry to Stores and Services (ACCES) Act of 2011 seeks to amend the Americans with Disabilities Act (ADA) of 1990 to prohibit an aggrieved person from starting a civil action for discrimination based on the failure to remove a structural barrier to entry into an existing public accommodation unless the owner or operator of such accommodation: (1) is provided a written notice specific enough to identify such barrier; and (2) has, within specified time periods (from 30 to 120 days) either failed to provide the plaintiff with a written description outlining improvements that will be made to remove such barrier or provided such description and failed to remove such barrier.

BACKGROUND: Existing federal law, the ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates a place of public accommodation (42 U.S.C. Sec.12181). According section 302(b) (2)) persons with disabilities have the right to start a civil action if the responsible party fails to remove the structural barriers to entry into existing public accommodations.

Existing California law, the Unruh Civil Rights Act, declares that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. A violation of the ADA also constitutes a violation of Unruh. A violation of this section subjects a person to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civ. Code Sec.51)

H.R. 3356 is substantially similar to California Senate Bill (SB) 783 that was introduced this year by Senator Dutton. SB 783 imposes similar pre-litigation procedural requirements before a person could pursue a lawsuit under the state civil rights and equal access to the public or housing accommodation laws, including the ADA. The Senate Judiciary Committee analysis traced the history of these types of lawsuits in the California Legislature and illustrated that the strategy of "notice and delay" bills have been used as a means to begin undermining ADA access laws since its 1990 enactment. SB 783 did not become law.

ANALYSIS/DISCUSSION: H.R. 3356 would impose pre-litigation procedural requirements upon the filing of any claim of violations of the ADA access laws. This bill would require a specified and highly detailed 30-day notice of violation followed by 6058

day review and before the expiration of additional 120 days after of initial notice given to the property owner or other responsible party, if correction of the violation does not occur by the end of 120 days and the owner fails to provide a satisfactory explanation, the claimant would be permitted to file the claim.

The impact of HR 3356 and other federal and state legislative efforts to create pre-litigation hurdles for persons with disabilities trying to enforce their civil rights is by itself extra inequity since other protected classes or persons are not subject to these delaying procedures. Also, time, efforts and expenses associated with enforcing their rights may impact their daily lives not in a positive way and in some may become a source of stress and nervous tension.

In California, Chapter 549, Statutes of 2008 (SB 1608) took effect on January 1, 2009, and did not create any pre-litigation hurdle for a person with disability but instead- among other things- decided that disability access standards adopted in state law would be used unless standards under federal law are higher. SB 1608 created the California Commission on Disability Access (CCDA) and enumerated the duties of the certified access specialists (CAS) with respect to the inspection, corrections that may need to be made to the site, written inspection report, and the statement of compliance, including the issuance-upon completion of the inspection and a determination that the site meets applicable construction-related accessibility standards-of a specified, watermarked, and sequentially numbered disability access certificate that may be displayed at the site. Generally speaking, the CCDA as an independent state entity was given the responsibility for monitoring disability access compliance in California.

H.R. 3365 disregards the CCDA and would create conflicting standards and procedures

COUNCIL STRATEGIC PLAN OBJECTIVE: Support public policies that positively impact the lives of persons with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: None

STAFF RECOMMENDATION: Oppose H.R.3356

ATTACHMENT: H.R. 3356

PREPARED: Karim Alipourfard December 22, 2011

112TH CONGRESS
1ST SESSION

H. R. 3356

To amend the Americans with Disabilities Act of 1990 to impose notice and a compliance opportunity to be provided before commencement of a private civil action.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 2011

Mr. DANIEL E. LUNGREN of California (for himself, Mr. HUNTER, Mr. CALVERT, and Ms. JENKINS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Americans with Disabilities Act of 1990 to impose notice and a compliance opportunity to be provided before commencement of a private civil action.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ACCESS (ADA Com-
5 pliance for Customer Entry to Stores and Services) Act
6 of 2011”.

7 **SEC. 2. AMENDMENTS.**

8 Section 308(a)(1) of the Americans with Disabilities
9 Act of 1990 (42 U.S.C. 12188(a)(1)) is amended—

(1) by striking “PROCEDURES.—” and all that follows through “The”, and inserting the following:

“PROCEDURES.—

“(A) IN GENERAL.—Subject to subparagraph (B), the”, and

(2) by adding at the end the following:

“(B) STRUCTURAL BARRIERS TO ENTRY INTO EXISTING PUBLIC ACCOMMODATIONS.—A civil action for discrimination under section 302(b)(2) based on the failure to remove a structural barrier to entry into an existing public accommodation may not be commenced by a person aggrieved by such discrimination unless—

“(i) such person has provided to the owner or operator of such accommodation a written notice specific enough to allow such owner or operator to identify such barrier; and

“(ii) beginning on the date such notice was received and—

“(I) before the expiration of 60 days after such date, such owner or operator failed to provide to such person a written description outlining im-

1 provements that will be made to re-
2 move such barrier; or

3 “(II)(aa) before the expiration of
4 60 days after such date, such owner
5 or operator provided such description
6 to such person; and

7 “(bb) before the expiration of
8 120 days after such description is pro-
9 vided, such owner or operator failed to
10 remove such barrier.”.


11 **SEC. 3. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 take effect on the 1st day of the 1st month beginning more
14 than 30 days after the date of the enactment of this Act.

○

Risley, Carol@SCDD

From: Christina Mills [cmills@cfilc.org]
Sent: Tuesday, December 06, 2011 8:56 AM
To: Risley, Carol@SCDD
Subject: CFILC Action Alert: Oppose Anti-ADA HR 3356 (Lungren)

		DISABILITY ACTION ALERT
		December, 2011
Visit CFILC online	HELP STOP H.R. 3356 (LUNGREN) THE ANTI- ADA BILL	
cfilc.org	The Americans with Disabilities Act (ADA) is a law that protects the civil rights of people with disabilities. One of the most important things that it does is to require the owners of businesses that are open to the public to fix or remove physical barriers that keep people with disabilities from entering and using them.	
Systems Change Network	Together we need to fight against a bill by California Republican Congressman Dan Lungren that attacks these civil rights by weakening our ability to enforce the ADA. It chips away at the progress we've made to educate Americans about the positive contributions we can make if given opportunities for equal access to schools, businesses, and jobs. Take Action Now!	
Access to Readiness Coalition	The Lungren bill discriminates against our community by requiring businesses being sued to be given written notice about every violation and then delays the case from moving forward for 4 months. It would even apply in cases where the owner has consistently refused to meet the ADA. The civil	
AT Network		
Californians for Olmstead		
Disability Action Coalition		
Disability Health Coalition		
Diversity Leadership Institute		
Transition to Home		
Yo! Disabled & Proud		
Youth Leadership		
<u>DONATE</u>		

NOW

rights of no other Americans are treated this way.

The notice and delay would actually **discourage** business owners from following the law. This bill would reward those who refuse to follow the law by giving them more time to remain inaccessible. In addition, it increases the chance that a lawsuit will not be filed. Why would anyone believe that a business would fix their access problems during the 4 month delay that they haven't already fixed in the last 21 years? In reality, it's the first step toward **repealing the ADA**.

Take Action Now!

[Remove yourself from this mailing.](#)

[Remove yourself from all mailings from California Foundation for Independent Living Centers.](#)

LEGISLATIVE AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: H.R. 3610, Streamlining Workforce Development Programs Act 2011

SUMMARY: The Streamlining Workforce Development Programs Act requires the state and local leaders to set “common performance measures” for all employment and job training programs to help eliminate waste and ensure taxpayer dollars are spent appropriately. The focal point of the legislation is to introduce the concepts of transparency, accountability and flexibility and simplified reporting requirements to create a seamless workforce development system, especially in state government. The bill also requires an independent evaluation of U.S. Department of Labor programs in this area to take place every five years.

BACKGROUND: The nation's workforce development system, authorized under the Workforce Investment Act (WIA) of 1998, has been characterized as a confusing maze of wide-ranging programs. A 2011 Government Accountability Office (GAO) report identified 47 separate federal job training programs costing taxpayers \$18 billion annually. Most of these programs overlap and serve the same populations, and only five of the programs have been evaluated for effectiveness. As a result of this broken system, taxpayer dollars are wasted, employers are unable to hire a properly trained workforce, and workers often lack skills necessary for successful performance.

ANALYSIS/DISCUSSION: Introduced by Representative Virginia Foxx (R-NC), Chairwoman of the U.S. House Subcommittee on Higher Education and Workforce Training, the Streamlining Workforce Development Programs Act (H.R. 3610) consolidates 33 of the 47 programs identified by the GAO into four flexible Workforce Investment Funds and makes other changes overall:

- The Workforce Investment Fund – provides job training services to adults, unemployed workers, and youth seeking employment;
- The State Youth Workforce Investment Fund – serves the nation's disadvantaged youth, with a focus on school completion;
- The Veterans Workforce Investment Fund – delivers employment and training services to America's veterans; and
- The Targeted Populations Workforce Investment Fund – continues assistance to special populations including Native Americans and seasonal farm workers.
- Sets “common performance measures” for all employment and job training programs to help eliminate waste and ensure taxpayer dollars are spent appropriately
- Allows states to submit one statewide workforce development plan to the federal government for all job training and related programs, providing administrative flexibility and ending burdensome paperwork requirements.

The bill appears over ambitious and needs a well coordinated and extended cooperation and implementation plan to succeed. It is also noticeable that while there are references to special population, seasonal farm workers and Native Americans, etc. apparently an open reference to the needs of persons with disabilities, is missing.

COUNCIL STRATEGIC PLAN OBJECTIVE: Support public policies that positively impact the lives of persons with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: None

STAFF RECOMMENDATION: Watch H.R. 3610

ATTACHMENT: H.R. 3610

PREPARED: Karim Alipourfard, December 30, 2011

112TH CONGRESS
1ST SESSION

H. R. 3610

To consolidate and streamline redundant and ineffective Federal workforce development programs to increase accountability, reduce administrative bureaucracies, and put Americans back to work.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2011

Ms. FOXX (for herself, Mr. ROE of Tennessee, Mr. WILSON of South Carolina, Mr. ROKITA, Mr. GOWDY, Mrs. ROBY, Mr. HECK, and Mr. KELLY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Armed Services, Veterans' Affairs, Agriculture, Natural Resources, the Judiciary, Energy and Commerce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To consolidate and streamline redundant and ineffective Federal workforce development programs to increase accountability, reduce administrative bureaucracies, and put Americans back to work.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Streamlining Work-
5 force Development Programs Act of 2011”.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, wherever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the amendment or repeal shall be considered to be
 6 made to a section or other provision of the Workforce In-
 7 vestment Act of 1998 (20 U.S.C. 9201 et seq.).

8 **SEC. 3. EFFECTIVE DATE.**

9 Except as otherwise provided, this Act and the
 10 amendments made by this Act shall be effective with re-
 11 spect to fiscal year 2013 and succeeding fiscal years.

12 **TITLE I—AMENDMENTS TO THE**
 13 **WORKFORCE INVESTMENT ACT**

14 **SEC. 101. STATE WORKFORCE INVESTMENT BOARDS.**

15 Section 111 is amended—

16 (1) in subsection (b)—

17 (A) in paragraph (1)—

18 (i) by striking subparagraph (B);

19 (ii) by redesignating subparagraph

20 (C) as subparagraph (B); and

21 (iii) in subparagraph (B) (as so redес-
 22 ignated)—

23 (I) by amending clause (i)(II) to
 24 read as follows:

25 “(II) represent businesses, in-
 26 cluding large and small businesses,

1 with immediate and long-term employ-
 2 ment opportunities in in-demand in-
 3 dustries and other occupations impor-
 4 tant to the State economy; and”;

5 (II) by striking clause (iii) and
 6 inserting the following:

7 “(iii) a State agency official respon-
 8 sible for economic development; and”;

9 (III) by striking clauses (iv)
 10 through (vi);

11 (IV) by amending clause (vii) to
 12 read as follows:

13 “(vii) such other representatives and
 14 State agency officials as the Governor may
 15 designate.”; and

16 (V) by redesignating clause (vii)
 17 as clause (iv); and

18 (B) by amending paragraph (3) to read as
 19 follows:

20 “(3) MAJORITY.—A $\frac{2}{3}$ majority of the mem-
 21 bers of the board shall be representatives described
 22 in paragraph (1)(C)(i).”;

23 (2) by amending subsection (d) to read as fol-
 24 lows:

1 “(d) FUNCTIONS.—The State board shall assist the
2 Governor of the State as follows:

3 “(1) STATE PLAN.—Consistent with section
4 112, develop a State plan.

5 “(2) STATEWIDE WORKFORCE DEVELOPMENT
6 SYSTEM.—Review and develop statewide policies and
7 programs in the State in a manner that supports a
8 comprehensive Statewide workforce development sys-
9 tem that will result in meeting the workforce needs
10 of the State and its local areas. Such review shall in-
11 clude determining whether the State should consoli-
12 date additional programs into the Workforce Invest-
13 ment Fund under section 132(b)(1).

14 “(3) WORKFORCE AND LABOR MARKET INFOR-
15 MATION SYSTEM.—Develop a statewide employment
16 statistics system described in section 15(e) of the
17 Wagner-Peyser Act, which may include using exist-
18 ing information conducted by the State economic de-
19 velopment agency or related entity in developing
20 such system.

21 “(4) EMPLOYER ENGAGEMENT.—Develop strat-
22 egies across local areas that meet the needs of em-
23 ployers and support economic growth in the State by
24 enhancing communication, coordination, and collabo-

1 ration among employers, economic development enti-
2 ties, and service providers.

3 “(5) DESIGNATION OF LOCAL AREAS.—Des-
4 ignate local areas as required under section 116.

5 “(6) ONE-STOP DELIVERY SYSTEM.—Identify
6 and disseminate information on best practices for ef-
7 fective operation of one-stop centers, including use
8 of innovative business outreach, partnerships, and
9 service delivery strategies.

10 “(7) PROGRAM OVERSIGHT.—Conduct the fol-
11 lowing program oversight:

12 “(A) Reviewing local plans.

13 “(B) Conducting oversight for State em-
14 ployment and training activities authorized
15 under section 134.

16 “(C) Preparing an annual report to the
17 Secretary described in section 136(d).

18 “(8) DEVELOPMENT OF PERFORMANCE MEAS-
19 URES.—Develop and ensure continuous improvement
20 of comprehensive State performance measures, in-
21 cluding State adjusted levels of performance, to as-
22 sess under section 136(b) the effectiveness of the
23 workforce investment activities in the State.”;

24 (3) by striking subsection (e);

1 (4) by redesignating subsection (f) as sub-
2 section (e);

3 (5) by inserting after subsection (e) (as so re-
4 designated), the following:

5 “(f) STAFF.—The State board may employ staff to
6 assist in carrying out the functions described in subsection
7 (d).”; and

8 (6) in subsection (g), by inserting “electronic
9 means and” after “on a regular basis through”.

10 **SEC. 102. STATE PLAN.**

11 Section 112—

12 (1) in subsection (a)—

13 (A) by striking “127 or”; and

14 (B) by striking “5-year strategy” and in-
15 serting “4-year strategy”; and

16 (2) in subsection (b)—

17 (A) by amending paragraph (4) to read as
18 follows:

19 “(4) information describing—

20 “(A) the economic conditions in the State;

21 “(B) the immediate and long-term skilled
22 workforce needs of in-demand industries and
23 other occupations important to the State econ-
24 omy;

1 “(C) the knowledge and skills of the work-
2 force in the State; and

3 “(D) workforce development activities (in-
4 cluding education and training) in the State;”;

5 (B) by amending paragraph (7) to read as
6 follows:

7 “(7) a description of the State criteria for de-
8 termining the eligibility of training providers in ac-
9 cordance with section 122, including how the State
10 will take into account the performance of providers
11 and whether the training programs relate to occupa-
12 tions that are in-demand;”;

13 (C) by amending paragraph (8) to read as
14 follows:

15 “(8)(A) a description of the procedures that will
16 be taken by the State to assure coordination of, and
17 avoid duplication among, the programs and activities
18 identified under section 501(b)(2); and

19 “(B) a description of common data collection
20 and reporting processes used for the programs and
21 activities described in subparagraph (A) carried out
22 by one-stop partners, including—

23 “(i) assurances that such processes use
24 quarterly wage records for performance meas-

1 ures described in section 136(b)(2)(A) that are
 2 applicable to such programs or activities; or

3 “(ii) if such wage records are not being
 4 used for the performance measures, an identi-
 5 fication of the barriers to using such wage
 6 records and a description of how the State will
 7 address such barriers within one year of the ap-
 8 proval of the plan;”;

9 (D) in paragraph (9), by striking “, includ-
 10 ing comment by representatives of businesses
 11 and representatives of labor organizations,”;

12 (E) in paragraph (11), by striking “under
 13 sections 127 and 132” and inserting “under
 14 section 132,”;

15 (F) by striking paragraph (12);

16 (G) by redesignating paragraphs (13)
 17 through (18) as paragraphs (12) through (17),
 18 respectively;

19 (H) in paragraph (16) (as so redesign-
 20 ated)—

21 (i) in subparagraph (A)—

22 (I) by striking “and” at the end
 23 of clause (iii);

24 (II) by amending clause (iv) to
 25 read as follows:

1 “(iv) how the State will serve the em-
2 ployment and training needs of dislocated
3 workers (including displaced homemakers),
4 low-income individuals (including recipients
5 of public assistance), individuals with lim-
6 ited English proficiency, homeless individ-
7 uals, individuals training for nontraditional
8 employment, youth, older workers, ex-of-
9 fenders, migrant and seasonal farm-
10 workers, refugee and entrants, veterans
11 (including disabled and homeless veterans),
12 and Native Americans; and”;

13 (III) by adding at the end the
14 following new clause:

15 “(v) a description of how the State
16 will—

17 “(I) consistent with section 188
18 and Executive Order 13217 (42
19 U.S.C. 12131 note), serve the employ-
20 ment and training needs of individuals
21 with disabilities; and

22 “(II) consistent with sections 504
23 and 508 of the Rehabilitation Act of
24 1973, include the provision of out-
25 reach, intake, assessments, and serv-

1 ice delivery, the development of per-
2 formance measures, the training of
3 staff, and other aspects of accessibility
4 to programs and services under this
5 subtitle;” and

6 (ii) in subparagraph (B), by striking
7 “to the extent practicable” and inserting
8 “in accordance with the requirements of
9 the Jobs for Veterans Act (Public Law
10 107–288) and the amendments made by
11 such Act (except sections 4103A and 4104
12 of title 38, United States Code)”;

13 (I) by striking paragraph (17) (as so re-
14 designated) and inserting the following:

15 “(17) a description of the strategies and pro-
16 grams providing outreach to businesses, identifying
17 workforce needs of businesses in the State, and en-
18 suring that such needs will be met (including the
19 needs of small businesses), which may include—

20 “(A) implementing innovative programs
21 and strategies designed to meet the needs of all
22 businesses in the State, including small busi-
23 nesses, which may include incumbent worker
24 training programs or industry or sector part-
25 nerships, and make the statewide workforce in-

1 vestment system more relevant to the needs of
 2 State and local businesses, consistent with the
 3 objectives of this title; and

4 “(B) providing incentives and technical as-
 5 sistance to assist each local area in the State in
 6 more fully engaging all employers, including
 7 small employers, in local workforce investment
 8 activities—

9 “(i) to make the workforce investment
 10 system more relevant to the needs of area
 11 businesses; and

12 “(ii) to better coordinate workforce in-
 13 vestment, economic development, and post-
 14 secondary education and training efforts to
 15 contribute to the economic well-being of
 16 the local area and region, as determined
 17 appropriate by the local board;

18 “(18) a description of how the State will utilize
 19 technology to facilitate access to services in remote
 20 areas, which may be used throughout the State;

21 “(19) a description of the State strategy and
 22 assistance to be provided for encouraging regional
 23 cooperation within the State and across State bor-
 24 ders, as appropriate; and

1 “(20) a description of the actions that will be
 2 taken by the State to foster communication and
 3 partnerships with non-profit organizations (including
 4 community, faith-based, and philanthropic organiza-
 5 tions) that provide employment-related, training,
 6 and complementary services, to enhance the quality
 7 and comprehensiveness of services available to par-
 8 ticipants under this title.”;

9 (3) in subsection (c), by striking “period,
 10 that—” all that follows through paragraph (2) and
 11 inserting “period, that the plan is inconsistent with
 12 the provisions of this title.”; and

13 (4) in subsection (d), by striking “5-year” and
 14 inserting “4-year”.

15 **SEC. 103. LOCAL WORKFORCE INVESTMENT AREAS.**

16 Section 116 is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (1)—

19 (i) in subparagraph (A)—

20 (I) by striking “Except as pro-
 21 vided in subsection (b), and consistent
 22 with paragraphs (2), (3), and (4), in”
 23 and inserting “In”; and

24 (II) by striking “127 or”; and

1 (ii) by amending subparagraph (B) to
2 read as follows:

3 “(B) CONSIDERATIONS.—In making the
4 designation of local areas, the Governor shall
5 take into consideration the following:

6 “(i) The extent to which such local
7 areas are consistent with labor market
8 areas.

9 “(ii) The extent to which labor market
10 areas align with economic development re-
11 gions.

12 “(iii) Whether such local areas have
13 the appropriate education and training
14 providers to meet the needs of the local
15 workforce.

16 “(iv) The distance that individuals
17 will need to travel to receive services pro-
18 vided in such local areas.”;

19 (B) by amending paragraph (2) to read as
20 follows:

21 “(2) TECHNICAL ASSISTANCE.—The Secretary
22 shall, if requested by the Governor of a State, pro-
23 vide the State with technical assistance in making
24 the determinations required under paragraph (1).
25 The Secretary shall not issue regulations governing

1 determinations to be made under paragraph (1).”;
 2 and

3 (C) by striking paragraph (3) and insert-
 4 ing the following:

5 “(3) DESIGNATION ON RECOMMENDATION OF
 6 STATE BOARD.—The Governor may approve a re-
 7 quest from any unit of general local government (in-
 8 cluding a combination of such units) for designation
 9 as a local area under paragraph (1) if the State
 10 board determines, taking into account the factors
 11 described in clauses (i) through (iv) of paragraph
 12 (1)(B), and recommends to the Governor, that such
 13 area shall be so designated.”;

14 (D) by striking paragraph (4); and

15 (E) by redesignating paragraph (5) as
 16 paragraph (4); and

17 (2) by amending subsection (b) to read as fol-
 18 lows:

19 “(b) SINGLE STATES.—Consistent with subsection
 20 (a)(1)(B), the Governor may designate a State as a single
 21 State local area for the purposes of this title.”.

22 **SEC. 104. LOCAL WORKFORCE INVESTMENT BOARDS.**

23 Section 117 is amended—

24 (1) by striking subsection (c)(1)(C); and

25 (2) by striking subsection (i).

1 **SEC. 105. LOCAL PLAN.**

2 Section 118(b) is amended—

3 (1) by striking “and” at the end of paragraph
4 (9);

5 (2) redesignating paragraph (10) as paragraph
6 (11); and

7 (3) inserting after paragraph (9), the following:

8 “(10) a description of how the local area will
9 serve the employment and training needs of dis-
10 located workers (including displaced homemakers),
11 low-income individuals (including recipients of public
12 assistance), individuals with limited English pro-
13 ficiency, homeless individuals, individuals training
14 for nontraditional employment, youth, older workers,
15 ex-offenders, migrant and seasonal farmworkers, ref-
16 ugee and entrants, veterans (including disabled vet-
17 erans and homeless veterans), and Native Ameri-
18 cans; and”.

19 **SEC. 106. ESTABLISHMENT OF ONE-STOP DELIVERY SYS-**
20 **TEM.**

21 Section 121 is amended—

22 (1) in subsection (b)—

23 (A) in paragraph (1)(B)—

24 (i) by striking clause (vi); and

1 (ii) by redesignating clauses (vii)
 2 through (xii) as clauses (vi) through (xi),
 3 respectively; and

4 (B) in paragraph (2)(B)—

5 (i) by striking clause (ii); and

6 (ii) by redesignating clauses (iii)
 7 through (v) as clauses (ii) through (iv), re-
 8 spectively;

9 (2) in subsection (d)(2)—

10 (A) by amending subparagraph (A) to read
 11 as follows:

12 “(A) shall be designated or certified as a
 13 one-stop operator through a competitive proc-
 14 ess; and”; and

15 (B) in subparagraph (B), by striking
 16 clause (ii) and redesignating clauses (iii)
 17 through (vi) as clauses (ii) through (v), respec-
 18 tively; and

19 (3) by striking subsection (e) and redesignating
 20 subsection (f) as subsection (e).

21 **SEC. 107. IDENTIFICATION OF ELIGIBLE PROVIDERS OF**
 22 **TRAINING SERVICES.**

23 Section 122 is amended—

1 (1) in subsection (b)(2)(C), by striking “, in-
 2 cluding representatives of business and labor organi-
 3 zations”;

4 (2) in subsection (c)(3), by striking “, including
 5 representatives of business and labor organizations”;
 6 and

7 (3) in subsection (d)(3)(A), by striking “in sec-
 8 tions 128(a) and 133(a)(1), as appropriate” and in-
 9 serting “in section 133(a)(1)”.

10 **SEC. 108. IDENTIFICATION OF ELIGIBLE PROVIDERS OF**
 11 **YOUTH ACTIVITIES.**

12 Section 123 is repealed.

13 **SEC. 109. GENERAL AUTHORIZATION.**

14 Chapter 5 of title I is amended—

15 (1) by striking the heading related to chapter 5
 16 and inserting the following: “**EMPLOYMENT**
 17 **AND TRAINING ACTIVITIES**”; and

18 (2) in section 131—

19 (A) by striking “paragraphs (1)(B) and
 20 (2)(B) of”; and

21 (B) by striking “adults, and dislocated
 22 workers” and inserting “adults, dislocated
 23 workers, youth, veterans, and targeted popu-
 24 lations”.

1 **SEC. 110. STATE ALLOTMENTS.**

2 Section 132 is amended—

3 (1) by amending subsection (a) to read as fol-
4 lows:

5 “(a) IN GENERAL.—The Secretary shall—

6 “(1) reserve 2 percent of the total amount ap-
7 propriated under subsections (a) through (d) of sec-
8 tion 137 for a fiscal year, of which—

9 “(A) not less than 85 percent shall be used
10 for national emergency grants under section
11 173;

12 “(B) not more than 10 percent may be
13 used for demonstration projects under section
14 171; and

15 “(C) not more than 5 percent may be used
16 to provide technical assistance under section
17 170; and

18 “(2) from the remaining amount appropriated
19 under section 137(a) for a fiscal year, make allot-
20 ments in accordance with subsection (b)(1);

21 “(3) from the remaining amount appropriated
22 under section 137(b) for a fiscal year, make allot-
23 ments in accordance with subsection (b)(2);

24 “(4) from the remaining amount appropriated
25 under section 137(c) for a fiscal year, make allot-
26 ments in accordance with subsection (b)(3); and

1 “(5) from the remaining amount appropriated
 2 under section 137(d) for a fiscal year, make allot-
 3 ments in accordance with subsection (b)(4).”; and
 4 (2) by amending subsection (b) to read as fol-
 5 lows:

6 “(b) ALLOTMENT AMONG STATES FOR EMPLOYMENT
 7 AND TRAINING ACTIVITIES.—

8 “(1) WORKFORCE INVESTMENT FUND.—

9 “(A) RESERVATION FOR OUTLYING
 10 AREAS.—

11 “(i) IN GENERAL.—From the amount
 12 made available under subsection (a)(2) for
 13 a fiscal year, the Secretary shall reserve
 14 not more than $\frac{1}{4}$ of 1 percent to provide
 15 assistance to the outlying areas.

16 “(ii) RESTRICTION.—The Republic of
 17 Palau shall cease to be eligible to receive
 18 funding under this subparagraph upon en-
 19 tering into an agreement for extension of
 20 United States educational assistance under
 21 the Compact of Free Association (approved
 22 by the Compact of Free Association
 23 Amendments Act of 2003 (Public Law
 24 108–188)) after the date of enactment of

the Streamlining Workforce Development
Programs Act of 2011.

“(B) STATES.—

“(i) IN GENERAL.—After determining
the amount to be reserved under subpara-
graph (A), the Secretary shall allot the re-
mainder of the amount referred to in sub-
section (a)(2) for a fiscal year to the
States pursuant to clause (ii) for employ-
ment and training activities and statewide
workforce investment activities.

“(ii) FORMULA.—Subject to clauses
(iii) and (iv), of the remainder—

“(I) $33\frac{1}{3}$ percent shall be allot-
ted on the basis of the relative num-
ber of unemployed individuals in areas
of substantial unemployment in each
State, compared to the total number
of unemployed individuals in areas of
substantial unemployment in all
States;

“(II) $33\frac{1}{3}$ percent shall be allot-
ted on the basis of the relative num-
ber of individuals in the civilian labor
force in each State as compared to the

1 total number of such individuals in all
2 States; and

3 “(III) $33\frac{1}{3}$ percent shall be allot-
4 ted on the basis of the relative num-
5 ber of individuals in a State who have
6 been unemployed for 15 weeks or
7 more, compared to the total number
8 of individuals in all States who have
9 been unemployed for 15 weeks or
10 more.

11 “(iii) MINIMUM AND MAXIMUM PER-
12 CENTAGES.—

13 “(I) MINIMUM PERCENTAGE.—
14 The Secretary shall ensure that no
15 State shall receive an allotment under
16 this subparagraph for a fiscal year
17 that is less than 90 percent of the al-
18 lotment percentage of the State for
19 the preceding fiscal year.

20 “(II) MAXIMUM PERCENTAGE.—
21 Subject to subclause (I), the Secretary
22 shall ensure that no State shall re-
23 ceive an allotment under this subpara-
24 graph for a fiscal year that is more
25 than 130 percent of the allotment per-

centage of the State for the preceding
fiscal year.

“(iv) SMALL STATE MINIMUM ALLOT-
MENT.—Subject to clause (iii), the Sec-
retary shall ensure that no State shall re-
ceive an allotment under this subparagraph
for a fiscal year that is less than $\frac{2}{10}$ of 1
percent of the remainder described in
clause (i) for the fiscal year.

“(v) DEFINITIONS.—For the purpose
of the formula specified in this subpara-
graph:

“(I) INDIVIDUAL.—The term ‘in-
dividual’ means an individual who is
not less than age 16 and not more
than age 72.

“(II) ALLOTMENT PERCENT-
AGE.—The term ‘allotment percent-
age’—

“(aa) used with respect to
fiscal year 2012, means the per-
centage of the amounts allotted
to States under the provisions
listed in paragraphs (1) through
(6) of section 201 of the Stream-

lining Workforce Development Programs Act of 2011 and chapter 5 of this title (as such provisions and chapter were in effect on the day before the date of enactment of such Act) that is received under such provisions and under such chapter by the State involved for fiscal year 2012; and

“(bb) used with respect to fiscal year 2013 or a subsequent year, means the percentage of the remainder described in clause (i) that is received through an allotment made under this subparagraph for the fiscal year.

“(2) STATE YOUTH WORKFORCE INVESTMENT FUND.—

“(A) RESERVATION FOR OUTLYING AREAS.—

“(i) IN GENERAL.—From the amount made available under subsection (a)(3) for a fiscal year, the Secretary shall reserve not more than $\frac{1}{4}$ of 1 percent to provide assistance to the outlying areas.

1 “(ii) RESTRICTION.—The Republic of
 2 Palau shall cease to be eligible to receive
 3 funding under this subparagraph upon en-
 4 tering into an agreement for extension of
 5 United States educational assistance under
 6 the Compact of Free Association (approved
 7 by the Compact of Free Association
 8 Amendments Act of 2003 (Public Law
 9 108–188)) after the date of enactment of
 10 the Streamlining Workforce Development
 11 Programs Act of 2011.

12 “(B) STATES.—

13 “(i) IN GENERAL.—After determining
 14 the amount to be reserved under subpara-
 15 graph (A), the Secretary shall allot the re-
 16 mainder of the amount referred to in sub-
 17 section (a)(3) for a fiscal year to the
 18 States pursuant to clause (ii) for State
 19 youth activities.

20 “(ii) FORMULA.—Subject to clauses
 21 (iii) and (iv), of the remainder—

22 “(I) 50 percent shall be allotted
 23 on the basis of the relative number of
 24 disadvantaged youth who are ages 16
 25 through 24 in each State, compared

1 to the total number of disadvantaged
2 youth who are ages 16 through 24 in
3 all States; and

4 “(II) 50 percent shall be allotted
5 on the basis of the relative number of
6 secondary school dropouts who are
7 ages 16 and 17 compared to the total
8 number of secondary school dropouts
9 who are ages 16 and 17 in all States.

10 “(iii) MINIMUM AND MAXIMUM PER-
11 CENTAGES.—

12 “(I) MINIMUM PERCENTAGE.—
13 The Secretary shall ensure that no
14 State shall receive an allotment under
15 this subparagraph for a fiscal year
16 that is less than 90 percent of the al-
17 lotment percentage of the State for
18 the preceding fiscal year.

19 “(II) MAXIMUM PERCENTAGE.—
20 Subject to subclause (I), the Secretary
21 shall ensure that no State shall re-
22 ceive an allotment under this subpara-
23 graph for a fiscal year that is more
24 than 130 percent of the allotment per-

centage of the State for the preceding
fiscal year.

“(iv) SMALL STATE MINIMUM ALLOT-
MENT.—Subject to clause (iii), the Sec-
retary shall ensure that no State shall re-
ceive an allotment under this subparagraph
for a fiscal year that is less than $\frac{2}{10}$ of 1
percent of the remainder described in
clause (i) for the fiscal year.

“(v) DEFINITIONS.—For the purpose
of the formula specified in this subpara-
graph:

“(I) ALLOTMENT PERCENT-
AGE.—The term ‘allotment percent-
age’—

“(aa) used with respect to
fiscal year 2012, means the per-
centage of the amounts allotted
to States under the provisions
listed in paragraphs (7) through
(9) of section 201 of the Stream-
lining Workforce Development
Programs Act of 2011 (as such
provisions were in effect on the
day before the date of enactment

of such Act) that is received under such provisions by the State involved for fiscal year 2012; and

“(bb) used with respect to fiscal year 2013 or a subsequent year, means the percentage of the remainder described in clause (i) that is received through an allotment made under this subparagraph for the fiscal year.

“(II) DISADVANTAGED YOUTH.—
The term ‘disadvantaged youth’ means an individual who is age 16 through 24 who receives an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

“(aa) the poverty line; or

“(bb) 70 percent of the lower living standard income level.

“(3) VETERANS WORKFORCE INVESTMENT
FUND.—

1 “(A) RESERVATION FOR OUTLYING
2 AREAS.—

3 “(i) IN GENERAL.—From the amount
4 made available under subsection (a)(4) for
5 a fiscal year, the Secretary shall reserve
6 not more than $\frac{1}{4}$ of 1 percent to provide
7 assistance to the outlying areas.

8 “(ii) RESTRICTION.—The Republic of
9 Palau shall cease to be eligible to receive
10 funding under this paragraph upon enter-
11 ing into an agreement for extension of
12 United States educational assistance under
13 the Compact of Free Association (approved
14 by the Compact of Free Association
15 Amendments Act of 2003 (Public Law
16 108–188)) after the date of enactment of
17 the Streamlining Workforce Development
18 Programs Act of 2011.

19 “(B) STATES.—

20 “(i) IN GENERAL.—After determining
21 the amount to be reserved under subpara-
22 graph (A), the Secretary shall allot the re-
23 mainder of the amount referred to in sub-
24 section (a)(4) for a fiscal year to the

1 States pursuant to clause (ii) for veterans
2 employment and training activities.

3 “(ii) FORMULA.—Subject to clauses
4 (iii) and (iv), the remainder shall be allot-
5 ted on the basis of the relative number of
6 unemployed veterans in each State, com-
7 pared to the total number of unemployed
8 veterans in all States.

9 “(iii) MINIMUM AND MAXIMUM PER-
10 CENTAGES.—

11 “(I) MINIMUM PERCENTAGE.—

12 The Secretary shall ensure that no
13 State shall receive an allotment under
14 this subparagraph for a fiscal year
15 that is less than 90 percent of the al-
16 lotment percentage of the State for
17 the preceding fiscal year.

18 “(II) MAXIMUM PERCENTAGE.—

19 Subject to subclause (I), the Secretary
20 shall ensure that no State shall re-
21 ceive an allotment under this subpara-
22 graph for a fiscal year that is more
23 than 130 percent of the allotment per-
24 centage of the State for the preceding
25 fiscal year.

1 “(iv) SMALL STATE MINIMUM ALLOT-
 2 MENT.—Subject to clause (iii), the Sec-
 3 retary shall ensure that no State shall re-
 4 ceive an allotment under this subparagraph
 5 for a fiscal year that is less than $\frac{2}{10}$ of 1
 6 percent of the remainder described in
 7 clause (i) for the fiscal year.

8 “(v) DEFINITION.—For the purpose
 9 of the formula specified in this subpara-
 10 graph, the term ‘allotment percentage’—

11 “(I) used with respect to fiscal
 12 year 2012, means the percentage of
 13 the amounts allotted to States under
 14 the provisions listed in paragraphs
 15 (12) through (15) of section 201 of
 16 the Streamlining Workforce Develop-
 17 ment Programs Act of 2011 (as such
 18 provisions were effect on the day be-
 19 fore the date of enactment of such
 20 Act) that is received under such provi-
 21 sions by the State involved for fiscal
 22 year 2012; and

23 “(II) used with respect to fiscal
 24 year 2013 or a subsequent year,
 25 means the percentage of the remain-

1 der described in clause (i) that is re-
2 ceived through an allotment made
3 under this subparagraph for the fiscal
4 year.

5 “(4) TARGETED POPULATIONS WORKFORCE IN-
6 VESTMENT FUND.—

7 “(A) RESERVATION FOR OUTLYING
8 AREAS.—

9 “(i) IN GENERAL.—From the amount
10 made available under subsection (a)(5) for
11 a fiscal year, the Secretary shall reserve—

12 “(I) not more than $\frac{1}{4}$ of 1 per-
13 cent to provide assistance to the out-
14 lying areas; and

15 “(II) not more than 1.5 percent
16 to provide assistance to Indian Tribes.

17 “(ii) RESTRICTION.—The Republic of
18 Palau shall cease to be eligible to receive
19 funding under this subparagraph upon en-
20 tering into an agreement for extension of
21 United States educational assistance under
22 the Compact of Free Association (approved
23 by the Compact of Free Association
24 Amendments Act of 2003 (Public Law
25 108–188)) after the date of enactment of

1 the Streamlining Workforce Development
2 Programs Act of 2011.

3 “(B) STATES.—

4 “(i) IN GENERAL.—After determining
5 the amount to be reserved under subpara-
6 graph (A), the Secretary shall allot the re-
7 mainder of the amount referred to in sub-
8 section (a)(5) for a fiscal year to the
9 States pursuant to clause (ii) for refugee
10 and entrant, ex-offender, migrant and sea-
11 sonal farmworker, and Native American
12 employment and training activities.

13 “(ii) FORMULA.—Subject to clauses
14 (iii) and (iv), the remainder shall be allot-
15 ted on the basis of the relative number of
16 refugee and entrants, ex-offenders, migrant
17 and seasonal farmworkers, and Native
18 Americans who are unemployed in each
19 State, compared to the total number of ref-
20 ugee and entrants, ex-offenders, migrant
21 and seasonal farmworkers, and Native
22 Americans who are unemployed in all
23 States.

24 “(iii) MINIMUM AND MAXIMUM PER-
25 CENTAGES.—

1 “(I) MINIMUM PERCENTAGE.—

2 The Secretary shall ensure that no
3 State shall receive an allotment under
4 this subparagraph for a fiscal year
5 that is less than 90 percent of the al-
6 lotment percentage of the State for
7 the preceding fiscal year.

8 “(II) MAXIMUM PERCENTAGE.—

9 Subject to subclause (I), the Secretary
10 shall ensure that no State shall re-
11 ceive an allotment under this subpara-
12 graph for a fiscal year that is more
13 than 130 percent of the allotment per-
14 centage of the State for the preceding
15 fiscal year.

16 “(iv) SMALL STATE MINIMUM ALLOT-
17 MENT.—Subject to clause (iii), the Sec-
18 retary shall ensure that no State shall re-
19 ceive an allotment under this subparagraph
20 for a fiscal year that is less than $\frac{2}{10}$ of 1
21 percent of the remainder described in
22 clause (i) for the fiscal year.

23 “(v) DEFINITION.—For the purpose
24 of the formula specified in this subpara-
25 graph, the term ‘allotment percentage’—

1 “(I) used with respect to fiscal
 2 year 2012, means the percentage of
 3 the amounts allotted to States under
 4 the provisions listed in paragraphs
 5 (16) through (23) of section 201 of
 6 the Streamlining Workforce Develop-
 7 ment Programs Act of 2011 (as such
 8 provisions were effect on the day be-
 9 fore the date of enactment of such
 10 Act) that is received under such provi-
 11 sions by the State involved for fiscal
 12 year 2012; and

13 “(II) used with respect to fiscal
 14 year 2013 or a subsequent year,
 15 means the percentage of the remain-
 16 der described in clause (i) that is re-
 17 ceived through an allotment made
 18 under this subparagraph for the fiscal
 19 year.”.

20 **SEC. 111. WITHIN STATE ALLOCATIONS.**

21 Section 133 is amended—

22 (1) by amending subsection (a) to read as fol-
 23 lows:

24 “(a) RESERVATIONS FOR STATE ACTIVITIES.—

1 “(1) STATEWIDE EMPLOYMENT AND TRAINING
2 ACTIVITIES.—

3 “(A) IN GENERAL.—The Governor of a
4 State shall reserve up to 15 percent of the total
5 amount allotted to the State under section
6 132(b)(1)(B) for a fiscal year to carry out the
7 statewide activities described in section 134(a).

8 “(B) STATEWIDE RAPID RESPONSE ACTIVI-
9 TIES.—Of the amount reserved under subpara-
10 graph (A) for a fiscal year, the Governor of the
11 State shall reserve not more than 10 percent
12 for statewide rapid response activities described
13 in section 134(a)(2)(A).

14 “(2) STATEWIDE YOUTH WORKFORCE INVEST-
15 MENT FUND.—The Governor of a State may reserve
16 up to 2 percent of the total amount allotted to the
17 State under section 132(b)(2)(B) for a fiscal year to
18 carry out the statewide activities described in section
19 134(a).

20 “(3) STATEWIDE VETERANS WORKFORCE IN-
21 VESTMENT FUND ACTIVITIES.—The Governor of a
22 State may reserve up to 2 percent of the total
23 amount allotted to the State under section
24 132(b)(3)(B) for a fiscal year to carry out statewide
25 activities described in section 134(a).

1 “(4) STATEWIDE TARGETED POPULATION
2 WORKFORCE INVESTMENT FUND ACTIVITIES.—The
3 Governor of a State may reserve up to 2 percent of
4 the total amount allotted to the State under section
5 132(b)(4)(B) for a fiscal year to carry out the state-
6 wide activities described in section 134(a).”;

7 (2) by amending subsection (b) to read as fol-
8 lows:

9 “(b) WITHIN STATE ALLOCATION.—

10 “(1) STATEWIDE EMPLOYMENT AND TRAINING
11 ACTIVITIES.—The Governor, acting in accordance
12 with the State plan, and after consulting with chief
13 elected officials in the local areas, shall—

14 “(A) allocate the funds that are allotted to
15 the State for employment and training activities
16 and statewide workforce investment activities
17 under section 132(b)(1)(B) and not reserved
18 under subsection (a)(1), in accordance with
19 paragraph (2)(A);

20 “(B) award the funds that are allotted to
21 the State for State youth activities under sec-
22 tion 132(b)(2)(B) and not reserved under sub-
23 section (a)(2) through competitive grants to eli-
24 gible entities, in accordance with section 135;

1 “(C) allocate the funds that are allotted to
 2 the State for veterans employment and training
 3 activities under section 132(b)(3)(B) and not
 4 reserved under subsection (a)(3), in accordance
 5 with paragraph (2)(B); and

6 “(D) allocate the funds that are allotted to
 7 the State for targeted populations employment
 8 and training activities under section
 9 132(b)(4)(B) and not reserved under subsection
 10 (a)(4), in accordance with paragraph (2)(C).

11 “(2) FORMULA ALLOCATIONS.—

12 “(A) WORKFORCE INVESTMENT FUND.—

13 “(i) ALLOCATION.—In allocating the
 14 funds described in paragraph (1)(A) to
 15 local areas, a State shall allocate—

16 “(I) $33\frac{1}{3}$ percent on the basis
 17 described in section 132(b)(B)(ii)(I);

18 “(II) $33\frac{1}{3}$ percent on the basis
 19 described in section 132(b)(B)(ii)(II);
 20 and

21 “(III) $33\frac{1}{3}$ percent on the basis
 22 described in section 132(b)(B)(ii)(III).

23 “(ii) MINIMUM AND MAXIMUM PER-
 24 CENTAGES.—

1 “(I) MINIMUM PERCENTAGE.—

2 The State shall ensure that no local
3 area shall receive an allotment under
4 this subparagraph for a fiscal year
5 that is less than 90 percent of the al-
6 location percentage of the local area
7 for the preceding fiscal year.

8 “(II) MAXIMUM PERCENTAGE.—

9 Subject to subclause (I), the State
10 shall ensure that no local area shall
11 receive an allocation for a fiscal year
12 under this subparagraph for a fiscal
13 year that is more than 130 percent of
14 the allocation percentage of the local
15 area for the preceding fiscal year.

16 “(iii) DEFINITIONS.—For the purpose
17 of the formula specified in this subpara-
18 graph:

19 “(I) INDIVIDUAL.—The term ‘in-
20 dividual’ means an individual who is
21 not less than age 16 and not more
22 than age 72.

23 “(II) ALLOCATION PERCENT-
24 AGE.—The term ‘allocation percent-
25 age’—

1 “(aa) used with respect to
2 fiscal year 2012, means the per-
3 centage of the amounts allocated
4 to local areas under paragraphs
5 (1) through (6) of section 201 of
6 the Streamlining Workforce De-
7 velopment Programs Act of 2011
8 and chapter 5 of this title (as
9 such provisions and such chapter
10 were in effect on the day before
11 the date of enactment of such
12 Act) that is received under such
13 provisions and such chapter by
14 the local area involved for fiscal
15 year 2012; and

16 “(bb) used with respect to
17 fiscal year 2013 or a subsequent
18 year, means the percentage of the
19 funds described in clause (i) that
20 is received through an allocation
21 made under this subparagraph
22 for the fiscal year.

23 “(B) VETERANS WORKFORCE INVESTMENT

24 FUND.—

1 “(i) ALLOCATION.—In allocating the
2 funds described in paragraph (1)(C) to
3 local areas, a State shall allocate the funds
4 on the basis described in section
5 132(b)(3)(B)(ii).

6 “(ii) MINIMUM AND MAXIMUM PER-
7 CENTAGES.—

8 “(I) MINIMUM PERCENTAGE.—
9 The State shall ensure that no local
10 area shall receive an allocation under
11 this subparagraph for a fiscal year
12 that is less than 90 percent of the al-
13 lotment percentage of the local area
14 under this subparagraph for the pre-
15 ceding fiscal year.

16 “(II) MAXIMUM PERCENTAGE.—
17 Subject to subclause (I), the State
18 shall ensure that no local area shall
19 receive an allocation for a fiscal year
20 under this subparagraph for a fiscal
21 year that is more than 130 percent of
22 the allotment percentage of the local
23 area for the preceding fiscal year.

1 “(iii) DEFINITION.—For the purpose
2 of the formula specified in this subpara-
3 graph, the term ‘allocation percentage’—

4 “(I) used with respect to fiscal
5 year 2012, means the percentage of
6 the amounts allocated to local areas
7 under paragraphs (12) through (15)
8 of section 201 of the Streamlining
9 Workforce Development Programs Act
10 of 2011 (as such provisions were in
11 effect on the day before the date of
12 enactment of such Act) that is re-
13 ceived under such provisions by the
14 local area involved for fiscal year
15 2012; and

16 “(II) used with respect to fiscal
17 year 2013 or a subsequent year,
18 means the percentage of the funds de-
19 scribed in clause (i) that is received
20 through an allocation made under this
21 subparagraph for the fiscal year.

22 “(C) TARGETED POPULATIONS WORK-
23 FORCE INVESTMENT FUND.—

24 “(i) ALLOCATION.—In allocating the
25 funds described in paragraph (1)(D) to

1 local areas, a State shall allocate funds on
2 the basis described in section
3 132(b)(4)(B)(ii).

4 “(ii) MINIMUM AND MAXIMUM PER-
5 CENTAGES.—

6 “(I) MINIMUM PERCENTAGE.—

7 The State shall ensure that no local
8 area shall receive an allotment under
9 this paragraph for a fiscal year that is
10 less than 90 percent of the allotment
11 percentage of the local area under this
12 subparagraph for the preceding fiscal
13 year.

14 “(II) MAXIMUM PERCENTAGE.—

15 Subject to subclause (I), the State
16 shall ensure that no local area shall
17 receive an allotment for a fiscal year
18 under this paragraph that is more
19 than 130 percent of the allotment per-
20 centage of the local area under this
21 subparagraph for the preceding fiscal
22 year.

23 “(iii) DEFINITION.—For the purpose
24 of the formula specified in this subpara-
25 graph, the term ‘allocation percentage’—

1 “(I) used with respect to fiscal
2 year 2012, means the percentage of
3 the amounts allocated to local areas
4 under paragraphs (16) through (23)
5 of section 201 of the Streamlining
6 Workforce Development Programs Act
7 of 2011 (as such provisions were in
8 effect on the day before the date of
9 enactment of such Act) that is re-
10 ceived under such provisions by the
11 local area involved for fiscal year
12 2012; and

13 “(II) used with respect to fiscal
14 year 2013 or a subsequent year,
15 means the percentage of the funds de-
16 scribed in clause (i) that is received
17 through an allocation made under this
18 subparagraph for the fiscal year.”.

19 (3) in subsection (c)—

20 (A) by amending paragraph (1) to read as
21 follows:

22 “(1) IN GENERAL.—The Governor, may in ac-
23 cordance with this subsection, reallocate to eligible
24 local area within the State amounts that are allo-
25 cated under subsection (b) for employment and

1 training activities and that are available for realloca-
 2 tion.”;

3 (B) in paragraph (2), by striking “para-
 4 graph (2)(A) or (3) of subsection (b) for such
 5 activities” and inserting “subsection (b) for
 6 such activities”;

7 (C) by amending paragraph (3) to read as
 8 follows:

9 “(3) REALLOCATIONS.—In making reallocations
 10 to eligible local areas of amounts available pursuant
 11 to paragraph (2) for a program year, the Governor
 12 shall allocate to each eligible local area within the
 13 State an amount based on the relative amount allo-
 14 cated to such local area under subsection (b)(2) for
 15 such activities for such prior program year, as com-
 16 pared to the total amount allocated to all eligible
 17 local areas in the State under subsection (b)(2) for
 18 such activities for such prior program year.”; and

19 (D) in paragraph (4), by striking “para-
 20 graph (2)(A) or (3) of”; and

21 (4) by adding at the end the following new sub-
 22 section:

23 “(d) LOCAL ADMINISTRATIVE COST LIMIT.—Of the
 24 amounts allocated to a local area under this section for
 25 a fiscal year, not more than 10 percent of the amount

1 may be used by the local board involved for the adminis-
 2 trative costs of carrying out local workforce investment ac-
 3 tivities in the local area under this chapter.”.

4 **SEC. 112. USE OF FUNDS FOR EMPLOYMENT AND TRAINING**
 5 **ACTIVITIES.**

6 Section 134 is amended—

7 (1) in subsection (a)—

8 (A) by amending paragraph (1) to read as
 9 follows:

10 “(1) IN GENERAL.—

11 “(A) IN GENERAL.—Subject to subpara-
 12 graph (C), funds reserved by a Governor for a
 13 State as described in paragraphs (1)(A), (2),
 14 (3), and (4) of section 133(a)—

15 “(i) shall be used to carry out the
 16 statewide employment and training activi-
 17 ties described in paragraph (2)(B); and

18 “(ii) may be used to carry out any of
 19 the statewide employment and training ac-
 20 tivities described in paragraph (3).

21 “(B) STATEWIDE RAPID RESPONSE ACTIVI-
 22 TIES.—Funds reserved by a Governor for a
 23 State as described in section 133(a)(1)(B) shall
 24 be used to carry out the statewide rapid re-
 25 sponse activities described in paragraph (2)(A).

“(C) SPECIAL RULE.—Funds reserved by a Governor for State as described in paragraphs (2), (3), and (4) of section 133(a) shall be used by the State to assist those individuals who are described in paragraphs (2)(B)(ii), (3)(B)(ii), and (4)(B)(ii) of section 132(b), respectively.”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “section 133(a)(2)” and inserting “section 133(a)(1)(B)”;

(ii) in subparagraph (B), by striking “sections 128” through “carry” and inserting “section 133(a)(1)(A) to carry”;

(C) in paragraph (3)—

(i) by striking “ACTIVITIES.—” and all that follows through “A State” and inserting “ACTIVITIES.—A State”;

(ii) by striking “sections 128(a)” through “to carry” and inserting “section 133(a)(1)(A) to carry”;

(iii) by striking subparagraph (B);

(iv) by redesignating clauses (i) through (vii) as subparagraphs (A) through (G), respectively; and

1 (v) in subparagraph (A) (as so redes-
 2 ignated), by striking “subject to subpara-
 3 graph (B)”; and

4 (D) by adding at the end the following new
 5 paragraph:

6 “(4) LIMITATION.—Not more than 5 percent of
 7 the funds allotted under section 132(b) to a State
 8 may be used by the State for administrative activi-
 9 ties carried out under this subsection.”;

10 (2) by amending subsection (b) to read as fol-
 11 lows:

12 “(b) LOCAL EMPLOYMENT AND TRAINING ACTIVI-
 13 TIES.—

14 “(1) IN GENERAL.—Subject to paragraph (2),
 15 funds allocated to a local area under section
 16 133(b)—

17 “(A) shall be used to carry out employ-
 18 ment and training activities described in section
 19 (d); and

20 “(B) may be used to carry out employment
 21 and training activities described in section (e).

22 “(2) SPECIAL RULE.—Funds allocated to a
 23 local area under subparagraphs (B) and (C) of sec-
 24 tion 133(b)(2) shall be used by the local board in-
 25 volved to assist those individuals who are described

1 in subparagraphs (B)(i) and (C)(i) of section
 2 133(b)(2), respectively.”;

3 (3) in subsection (d)—

4 (A) in paragraph (1)(A)—

5 (i) in the matter preceding clause (i),
 6 by striking “area for adults” through
 7 “shall” and inserting “area under section
 8 133(b) shall”;

9 (ii) in clause (ii), by striking “to
 10 adults and dislocated workers, respec-
 11 tively,”; and

12 (iii) in clauses (iii) and (iv), by strik-
 13 ing “to adult and dislocated workers, re-
 14 spectively, described in such paragraph”;

15 (B) in paragraph (2), by striking “who are
 16 adults and dislocated workers”;

17 (C) in paragraph (3)(A), in the matter
 18 preceding clause (i)(I), by striking “for adults”
 19 through “respectively” and inserting “under
 20 section 133(b) shall be used to provide training
 21 services to individuals”;

22 (D) in paragraph (4)(A), in the matter
 23 preceding clause (i), by striking “for adults”
 24 through “respectively” and inserting “under

1 section 133(b) shall be used to provide training
 2 services to individuals”; and

3 (4) by adding at the end the following new sub-
 4 section:

5 “(f) LOCAL VETERANS’ EMPLOYMENT REPRESENTA-
 6 TIVE.—

7 “(1) IN GENERAL.—From the funds allocated
 8 to a local area under section 133(b)(2)(B)(ii), a local
 9 area shall hire and employ one or more local vet-
 10 erans’ employment representatives to carry out em-
 11 ployment, training, and placement services under
 12 this subsection.

13 “(2) PRINCIPAL DUTIES.—A local veterans’ em-
 14 ployment representative in a local area shall—

15 “(A) conduct outreach to employers in the
 16 local area to assist veterans, including disabled
 17 veterans, in gaining employment, including—

18 “(i) conducting seminars for employ-
 19 ers; and

20 “(ii) in conjunction with employers,
 21 conducting job search workshops, and es-
 22 tablishing job search groups; and

23 “(B) facilitate employment, training, and
 24 placement services furnished to veterans, in-
 25 cluding disabled veterans, in the local area

1 under the one-stop delivery system under sec-
2 tion 121.

3 “(3) HIRING PREFERENCE FOR VETERANS AND
4 INDIVIDUALS WITH EXPERTISE IN SERVING VET-
5 ERANS.—A local area shall, to the maximum extent
6 practicable, employ veterans or individuals with ex-
7 pertise in serving veterans to serve as the local vet-
8 erans’ employment representative and carry out the
9 services described in paragraph (2). In hiring an in-
10 dividual to serve as a local veterans’ representative,
11 a local board shall give preference to veterans and
12 other individuals in the following order:

13 “(A) To qualified service-connected dis-
14 abled veterans.

15 “(B) If no veteran described in subpara-
16 graph (A) is available, to any other veterans.

17 “(C) If no veteran described in subpara-
18 graph (A) or (B) is available, to any other indi-
19 viduals with expertise in serving veterans.

20 “(4) REPORTING.—Each local veterans’ employ-
21 ment representative shall be administratively respon-
22 sible to the manager of the one-stop delivery center
23 in the local area and shall provide reports, not less
24 frequently than quarterly, to the manager of such
25 center and to the Director for Veterans’ Employ-

1 ment and Training for the State on compliance by
 2 the representative with Federal law and regulations
 3 with respect to the special services and hiring pref-
 4 erences described in paragraph (3) for veterans and
 5 individuals with expertise in serving veterans.”.

6 **SEC. 113. STATE YOUTH WORKFORCE INVESTMENT FUND**
 7 **ACTIVITIES.**

8 Chapter 5 of subtitle B of title I is amended by add-
 9 ing at the end the following new section:

10 **“SEC. 135. STATE YOUTH WORKFORCE INVESTMENT FUND**
 11 **ACTIVITIES.**

12 “(a) IN GENERAL.—Of the funds allotted to a State
 13 under section 132(b)(2)(B), the Governor of a State—

14 “(1) may reserve up to 5 percent to provide
 15 technical assistance to, and conduct evaluations as
 16 described in section 172 of the programs and activi-
 17 ties carried out under this section; and

18 “(2) using the remainder, shall award grants,
 19 on a competitive basis, to eligible entities to carry
 20 out programs and activities authorized under this
 21 section to assist eligible youth in acquiring the edu-
 22 cation and skills, credentials, and employment expe-
 23 rience necessary to succeed in the labor market.

24 “(b) ELIGIBLE ENTITY DEFINED.—For purposes of
 25 this section, the term ‘eligible entity’ means—

1 “(1) a local board or a consortium of local
2 boards;

3 “(2) a nonprofit entity, for-profit entity, or a
4 consortium of nonprofit or for-profit entities with a
5 demonstrated record of—

6 “(A) placing youth into year-round employ-
7 ment;

8 “(B) successfully implementing dropout re-
9 covery activities, or

10 “(C) successfully implementing intensive
11 and fully supervised programs of education, ca-
12 reer training, and work experience; or

13 “(3) a consortium of the entities described in
14 paragraphs (1) and (2).

15 “(c) GRANT PERIOD.—

16 “(1) IN GENERAL.—A grant under this sub-
17 section shall be awarded for a period of 1 year.

18 “(2) GRANT RENEWAL.—A Governor of a State
19 may renew, for up to 4 additional 1-year periods, a
20 grant awarded under this section.

21 “(d) AUTHORITY TO REQUIRE MATCH.—A Governor
22 of a State may require that eligible entities receiving
23 grants under this section provide a non-Federal share of
24 the cost of activities carried out under this section.

1 “(e) ELIGIBLE YOUTH.—To be eligible to participate
 2 in activities under this section, an individual shall be a
 3 youth between the ages 16 and 24 as of the time the eligi-
 4 bility determination is made by the Governor of the State
 5 who is—

6 “(1) a secondary school dropout;

7 “(2) a member of a low-income family;

8 “(3) a youth in foster care (including youth
 9 aging out of foster care);

10 “(4) a youth offender;

11 “(5) a youth who is an individual with a dis-
 12 ability;

13 “(6) a child of incarcerated parents; or

14 “(7) a migrant youth.

15 “(f) USE OF FUNDS.—An eligible entity receiving a
 16 grant under this section shall use such funds for activities
 17 that are designed to assist eligible youth in acquiring the
 18 education and skills, credentials, and employment experi-
 19 ence that are necessary to succeed in the labor market
 20 by carrying out at least one of the following:

21 “(1) Training and internships for out-of-school
 22 youth in in-demand industries or occupations impor-
 23 tant to the State and local economy.

24 “(2) Dropout recovery activities that are de-
 25 signed to lead to the attainment of a secondary

1 school diploma, General Education Development
2 (GED) credential, or other State-recognized equiva-
3 lent (including recognized alternative standards for
4 individuals with disabilities).

5 “(3) Activities designed to assist special youth
6 populations, such as court-involved youth, homeless
7 youth, foster-children, young parents, and youth
8 with disabilities.

9 “(4) Activities combining remediation of aca-
10 demic skills, work readiness training, and work expe-
11 rience, and including linkages to postsecondary edu-
12 cation and training, apprenticeships, and career-lad-
13 der employment.

14 “(5) Operating a residential center, such as a
15 Job Corps Center described in subsection (i) if the
16 requirements described in paragraph (3) of such
17 subsection are met, that shall be operated so as to
18 provide enrollees, in a well-supervised setting, with
19 access to activities described in this subsection.

20 “(6) Other evidence-based strategies or activi-
21 ties designed to improve the education and employ-
22 ment outcomes for youth.

23 “(g) APPLICATIONS.—To be eligible to receive a
24 grant under this section, an eligible entity shall submit
25 an application to a State at such time, in such manner,

1 and containing such information as the State may require,
2 including—

3 “(1) a description of how the strategies and ac-
4 tivities will be aligned with the State plan submitted
5 under section 112 and the local plans submitted
6 under section 118 with respect to the areas of the
7 State that will be the focus of grant activities under
8 this section;

9 “(2) a description of the educational and skills
10 training programs and activities the eligible entity
11 will provide to eligible youth under this section;

12 “(3) how the eligible entity will collaborate with
13 State and local workforce investment systems estab-
14 lished under this title in the provision of such pro-
15 grams and activities;

16 “(4) a description of the programs of dem-
17 onstrated effectiveness on which the provision of
18 such educational and skills training programs and
19 activities are based, and a description of how such
20 programs and activities will improve the education
21 and skills training for eligible youth;

22 “(5) a description of youth populations to be
23 served and the skill needs of those populations, and
24 the manner in which eligible youth will be recruited
25 and selected as participants;

1 “(6) a description of the private and public, and
 2 local and State resources that will be leveraged, in
 3 addition to the grant funds provided under this sec-
 4 tion, to provide the programs and activities under
 5 this section, and how the entity will ensure the sus-
 6 tainability of such programs and activities after
 7 grant funds are no longer available;

8 “(7) a description of the extent of the involve-
 9 ment of employers in such programs and activities;

10 “(8) a description of the levels of performance
 11 the eligible entity expects to achieve with respect to
 12 the indicators of performance for youth specified in
 13 section 136(b)(2)(A)(ii); and

14 “(9) a detailed budget and a description of the
 15 system of fiscal controls, and auditing and account-
 16 ability procedures that will be used to ensure fiscal
 17 soundness for the programs and activities provided
 18 under this section.

19 “(h) FACTORS FOR AWARD.—

20 “(1) IN GENERAL.—In awarding grants under
 21 this section, a State shall consider—

22 “(A) the quality of the proposed programs
 23 and activities;

24 “(B) the goals to be achieved;

1 “(C) the likelihood of successful implemen-
2 tation;

3 “(D) the extent to which the proposed pro-
4 grams and activities—

5 “(i) are based on proven strategies or
6 demonstrated results; or

7 “(ii) will expand the education and
8 skills training for eligible youth;

9 “(E) the extent of collaboration with the
10 State and local workforce investment systems in
11 carrying out the proposed programs and activi-
12 ties;

13 “(F) the extent of employer involvement in
14 the proposed programs and activities;

15 “(G) whether there are other Federal and
16 non-Federal funds available for similar activi-
17 ties to the proposed programs and activities,
18 and the additional State, local, and private re-
19 sources that will be provided to carry out the
20 proposed programs and activities;

21 “(H) the quality of the proposed programs
22 and activities in meeting the needs of the eligi-
23 ble youth to be served; and

24 “(I) the extent to which the proposed pro-
25 grams and activities will expand on services

1 provided to individuals between 16 and 24 years
2 of age provided under section 134.

3 “(2) EQUITABLE GEOGRAPHIC DISTRIBUTION.—In awarding grants under this section the
4 State shall ensure an equitable distribution of such
5 grants across geographically diverse areas.
6

7 “(i) ADDITIONAL USES OF FUNDS.—

8 “(1) IN GENERAL.—If the requirements de-
9 scribed in paragraph (3) are met, an eligible entity
10 may use a grant received under this section to oper-
11 ate a Job Corps Center that was established under
12 subtitle C (as in effect on the day before the enact-
13 ment of the Streamlining Workforce Development
14 Programs Act of 2011) and in existence on the day
15 before the enactment of such Act to—

16 “(A) provide work-based learning through-
17 out the enrollment of the enrollees of such Cen-
18 ter; and

19 “(B) assist the enrollees in obtaining
20 meaningful unsubsidized employment, partici-
21 pating in secondary or postsecondary education
22 programs, enrolling in other suitable career
23 training programs, or satisfying Armed Forces
24 requirements, on completion of their enrollment.

1 “(2) LIMITATION.—An eligible entity may use
2 not more than 10 percent of the grant funds re-
3 ceived under this section for construction and facili-
4 ties improvement of a Job Corps Center.

5 “(3) REQUIREMENTS.—In order for an eligible
6 entity to operate a Job Corps Center under para-
7 graph (1), the following requirements shall be met:

8 “(A) The State has submitted to the Sec-
9 retary, a written request for the appropriate
10 title and deed for such Job Corps Center, and
11 has been granted such title and deed under
12 paragraph (4)(A).

13 “(B) The State agency, or appropriate
14 agency responsible for inspecting public build-
15 ings and safeguarding the health of disadvan-
16 tagged students, has conducted an in-person re-
17 view of the physical condition and health-related
18 activities of the Job Corps Center. Such review
19 shall include a passing rate of occupancy under
20 State and local ordinances.

21 “(C) The State has demonstrated, as part
22 of the State plan in section 112, that it has de-
23 veloped and will enforce professional standards
24 of conduct.

25 “(4) SECRETARIAL ACTIONS.—

“(A) IN GENERAL.—Upon receiving a written request from a State under paragraph (3)(A), the Secretary, in coordination with the Administrator of the General Services Administration, shall transfer the title and deed for the appropriate Job Corps Center to the State within 30 days. The Secretary shall be prohibited from imposing any requirement on a State in exchange for such title and deed.

“(B) TRANSITION.—After 365 calendar days after the date of enactment of Streamlining Workforce Development Programs Act of 2011, the Secretary shall transfer all Job Corps Centers with respect to which the Secretary has not received a written request under paragraph (3)(A) to the Administrator of the General Services Administration for disposal of excess Federal real property.”.

SEC. 114. PERFORMANCE ACCOUNTABILITY SYSTEM.

Section 136 is amended—

(1) in subsection (b)—

(A) by amending paragraphs (1) and (2) to read as follows:

“(1) IN GENERAL.—For each State, the State performance measures shall consist of—

1 “(A)(i) the core indicators of performance
2 described in paragraph (2)(A); and

3 “(ii) additional indicators of performance
4 (if any) identified by the State under paragraph
5 (2)(C); and

6 “(B) a State adjusted level of performance
7 for each indicator described in subparagraph
8 (A).

9 “(2) INDICATORS OF PERFORMANCE.—

10 “(A) CORE INDICATORS OF PERFORM-
11 ANCE.—

12 “(i) IN GENERAL.—The core indica-
13 tors of performance for the program of em-
14 ployment and training activities authorized
15 under section 134, the program of adult
16 education and literacy activities authorized
17 under title II, and the program authorized
18 under title I of the Rehabilitation Act of
19 1973 (29 U.S.C. 720 et seq.), other than
20 section 112 or part C of that title (29
21 U.S.C. 732, 741), shall consist of—

22 “(I) the percentage of program
23 participants who are employed during
24 the first or second full calendar quar-
25 ter after exit from the program;

1 “(II) the percentage of program
2 participants who are employed during
3 the 2 full calendar quarters subse-
4 quent to the earliest full calendar
5 quarter during which the participant
6 was employed as described in sub-
7 clause (I);

8 “(III) the median earnings of
9 program participants who are em-
10 ployed during the 2 subsequent full
11 calendar quarters described in sub-
12 clause (II); and

13 “(IV) the percentage of program
14 participants who obtain a recognized
15 postsecondary credential, or a sec-
16 ondary school diploma or its recog-
17 nized equivalent (subject to clause
18 (iii)), during participation in or within
19 1 year after exit from program.

20 “(ii) CORE INDICATORS FOR ELIGIBLE
21 YOUTH.—The core indicators of perform-
22 ance for the program of youth activities
23 authorized under section 135, shall in-
24 clude—

1 “(I) the percentage of program
2 participants who are in education or
3 training activities, employed, or in the
4 military service, during the first or
5 second full calendar quarter after exit
6 from the program;

7 “(II) the percentage of program
8 participants who obtain a recognized
9 postsecondary credential described in
10 clause (i)(IV), or a secondary school
11 diploma or its recognized equivalent
12 (subject to clause (iii)), during partici-
13 pation in or within 1 year after exit
14 from the program; and

15 “(III) the median earnings of
16 program participants who are em-
17 ployed during the 2 subsequent full
18 calendar quarters described in sub-
19 clause (II).

20 “(iii) INDICATOR RELATING TO CRE-
21 DENTIAL.—For purposes of clause (i)(IV)
22 or (ii)(II), program participants who ob-
23 tain a secondary school diploma or its rec-
24 ognized equivalent shall be included in the
25 percentage counted as meeting the cri-

1 terion under such clause only if such par-
 2 ticipants, in addition to obtaining such di-
 3 ploma or its recognized equivalent, have
 4 obtained employment or are in an edu-
 5 cation or training program leading to a
 6 recognized postsecondary credential de-
 7 scribed in clause (i)(IV) within 1 year after
 8 exit from the program.

9 “(B) ADDITIONAL INDICATORS.—A State
 10 may identify in the State plan additional indica-
 11 tors for workforce investment activities author-
 12 ized under this subtitle.”;

13 (B) in paragraph (3)—

14 (i) in subparagraph (A)—

15 (I) in the heading, by striking
 16 “AND CUSTOMER SATISFACTION INDI-
 17 CATOR”;

18 (II) in clause (i), by striking
 19 “and the customer satisfaction indi-
 20 cator described in paragraph (2)(B)”;

21 (III) in clause (ii), by striking
 22 “and the customer satisfaction indi-
 23 cator of performance, for the first 3”
 24 and inserting “, for the first 2”;

25 (IV) in clause (iii)—

1 (aa) in the heading, by
2 striking “3 YEARS” and inserting
3 “2 YEARS”; and

4 (bb) by striking “and the
5 customer satisfaction indicator of
6 performance, for the first 3 pro-
7 gram years” and inserting “for
8 the first 2 program years”;

9 (V) in clause (iv), by striking
10 subclause (I) and redesignating sub-
11 clauses (II) and (II) as subclauses (I)
12 and (II), respectively;

13 (VI) in clause (v)—

14 (aa) in the heading, by
15 striking “4TH AND 5TH YEARS”
16 and inserting “**3RD AND 4TH**
17 **YEARS**”;

18 (bb) by striking “4th pro-
19 gram year” and inserting “3rd
20 program year”; and

21 (cc) by striking “4th and
22 5th program years” and inserting
23 “3rd and 4th program years”;
24 and

1 (VII) in clause (vi), by striking
 2 “described in clause (iv)(II)” and in-
 3 serting “described in clause (iv)(I)”;
 4 and

5 (ii) in subparagraph (B), by striking
 6 “paragraph (2)(C)” and inserting “para-
 7 graph (2)(B)”;

8 (2) in subsection (c)(1)(A)—

9 (A) by amending clause (i) to read as fol-
 10 lows:

11 “(i) the core indicators of perform-
 12 ance described in subsection (b)(2)(A) for
 13 activities described in such subsection,
 14 other than statewide workforce investment
 15 activities; and”;

16 (B) in clause (ii), by striking “(b)(2)(C)”
 17 and inserting “(b)(2)(B)”;

18 (3) in subsection (d)—

19 (A) in paragraph (1)—

20 (i) by striking “127 or”; and

21 (ii) by striking “and the customer sat-
 22 isfaction indicator” each place it appears;

23 (B) in paragraph (2)—

24 (i) by striking “and” at the end of
 25 subparagraph (E);

(ii) by striking the period at the end of subparagraph (F) and inserting “; and”; and

(iii) by adding at the end, the following:

“(G) with respect to each local area in the State—

“(i) the number of individuals who received core, intensive, and training services under section 134(d) during the most recent program year and fiscal year, and the preceding 5 program years, and where the individuals received the training, disaggregated by the type of entity that provided the training;

“(ii) the number of individuals who successfully exited out of core, intensive, and training services under section 134(d) during the most recent program year and fiscal year, and the preceding 5 program years, and where the individuals received the training, disaggregated by the type of entity that provided the training; and

“(iii) the average cost per participant of those individuals who received core, in-

1 tensive, and training services under section
 2 134(d) during the most recent program
 3 year and fiscal year, and the preceding 5
 4 programs years, and where the individuals
 5 received the training, disaggregated by the
 6 type of entity that provided the training.”;
 7 and

8 (C) in paragraph (3), by striking “through
 9 publication” and inserting “through electronic
 10 means”;

11 (4) in subsection (g)(1)(B), by striking “may
 12 reduce by not more than 5 percent,” and inserting
 13 “shall reduce”;

14 (5) in subsection (h)(2)—

15 (A) in subparagraph (A), by amending the
 16 matter preceding clause (i) to read as follows:

17 “(A) IN GENERAL.—If such failure con-
 18 tinues for a second consecutive year, the Gov-
 19 ernor shall take correction actions, including
 20 the development of a reorganization plan. Such
 21 plan shall—”;

22 (B) by redesignating subparagraphs (B)
 23 and (C) as subparagraphs (C) and (D), respec-
 24 tively;

1 (C) by inserting after subparagraph (A),
2 the following:

3 “(B) REDUCTION IN THE AMOUNT OF
4 GRANT.—If such failure continues for a third
5 consecutive year, the Governor of a State shall
6 reduce the amount of the grant that would (in
7 the absence of this subparagraph) be payable to
8 the local area under such program for the pro-
9 gram year after such third consecutive year.
10 Such penalty shall be based on the degree of
11 failure to meet local levels of performance.”;

12 (D) in subparagraph (C)(i) (as so redesign-
13 nated), by striking “a reorganization plan
14 under subparagraph (A) may, not later than 30
15 years after receiving notice of the reorganiza-
16 tion plan, appeal to the Governor to rescind or
17 revise such a plan” and inserting “correction
18 actions under subparagraphs (A) and (B) may,
19 not later than 30 days after receiving notice of
20 the actions, appeal to the Governor to rescind
21 or revise such actions”; and

22 (E) in subparagraph (D) (as so redesign-
23 nated), by striking “subparagraph (B)” and in-
24 serting “subparagraph (C)” each place it ap-
25 pears; and

1 (6) in subsection (i)(1)(B), by striking “sub-
 2 section (b)(2)(C)” and inserting “subsection
 3 (b)(2)(B)”.

4 **SEC. 115. AUTHORIZATION OF APPROPRIATIONS.**

5 Section 137 is amended to read as follows:

6 **“SEC. 137. AUTHORIZATION OF APPROPRIATIONS.**

7 “(a) EMPLOYMENT AND TRAINING ACTIVITIES.—
 8 There are authorized to be appropriated to carry out the
 9 activities described in section 132(a)(2), \$4,300,000,000
 10 for fiscal year 2013 and each of the 5 succeeding fiscal
 11 years.

12 “(b) STATEWIDE YOUTH EMPLOYMENT AND TRAIN-
 13 ING ACTIVITIES.—There are authorized to be appro-
 14 priated to carry out the activities described in section
 15 132(a)(3), \$1,900,000,000 for fiscal year 2013 and each
 16 of the 5 succeeding fiscal years.

17 “(c) VETERANS EMPLOYMENT AND TRAINING AC-
 18 TIVITIES.—There are authorized to be appropriated to
 19 carry out the activities described in section 132(a)(4),
 20 \$218,000,000 for fiscal year 2013 and each of the 5 suc-
 21 ceeding fiscal years.

22 “(d) TARGETED POPULATIONS EMPLOYMENT AND
 23 TRAINING ACTIVITIES.—There are authorized to be ap-
 24 propriated to carry out the activities described in section

1 132(a)(5), \$581,000,000 for fiscal year 2013 and each of
 2 the 5 succeeding fiscal years.”.

3 **SEC. 116. EVALUATIONS.**

4 Section 172 is amended—

5 (1) in subsection (a), by striking “the Secretary
 6 shall provide for the continuing evaluation of the
 7 programs and activities,” and inserting “the Sec-
 8 retary, through grants, contracts, or cooperative
 9 agreements, shall conduct, at least once every 5
 10 years, an independent evaluation of the programs
 11 and activities”; and

12 (2) by adding at the end, the following:

13 “(g) PUBLIC AVAILABILITY.—The results of the eval-
 14 uations conducted under this section shall be made pub-
 15 licly available, including by posting such results on the De-
 16 partment’s website.”.

17 **SEC. 117. STATE UNIFIED PLAN.**

18 Section 501 is amended—

19 (1) by amending subsection (b) to read as fol-
 20 lows:

21 “(b) STATE UNIFIED PLAN.—

22 “(1) IN GENERAL.—A State may develop and
 23 submit to the appropriate Secretaries a State unified
 24 plan for 2 or more of the activities or programs set
 25 forth in paragraph (2). The State unified plan shall

1 cover one or more of the activities set forth in sub-
 2 paragraphs (A) and (B) of paragraph (2) and may
 3 cover one or more of the activities set forth in sub-
 4 paragraphs (C) through (M) of paragraph (2). For
 5 purposes of this paragraph, the activities and pro-
 6 grams described in subparagraphs (A) and (B) of
 7 paragraph (2) shall not be considered to be 2 or
 8 more activities or programs for purposes of the uni-
 9 fied plan. Such activities or programs shall be con-
 10 sidered to be 1 activity or program.

11 “(2) ACTIVITIES AND PROGRAMS.—The activi-
 12 ties and programs referred to in paragraph (1) are
 13 as follows:

14 “(A) Programs and activities authorized
 15 under title I.

16 “(B) Programs and activities authorized
 17 under title II.

18 “(C) Programs authorized under the Reha-
 19 bilitation Act of 1973.

20 “(D) Secondary career education programs
 21 authorized under the Carl D. Perkins Career
 22 and Applied Technology Education Act.

23 “(E) Postsecondary career education pro-
 24 grams authorized under the Carl D. Perkins
 25 Career and Applied Technology Education Act.

1 “(F) Programs and activities authorized
2 under title II of the Trade Act of 1974.

3 “(G) National Apprenticeship Act of 1937.

4 “(H) Programs authorized under the Com-
5 munity Services Block Grant Act.

6 “(I) Programs authorized under the part A
7 of title IV of the Social Security Act.

8 “(J) Programs authorized under State un-
9 employment compensation laws (in accordance
10 with applicable Federal law).

11 “(K) Work programs authorized under sec-
12 tion 6(o) of the Food Stamp Act of 1977.

13 “(L) Programs and activities authorized
14 title I of the Housing and Community Develop-
15 ment Act of 1974.

16 “(M) Programs and activities authorized
17 under the Public Workers and Economic Devel-
18 opment Act of 1965.”; and

19 (2) by adding at the end, the following:

20 “(e) AUTHORITY TO CONSOLIDATE FUNDS INTO
21 WORKFORCE INVESTMENT FUND.—

22 “(1) IN GENERAL.—A State may consolidate
23 funds allotted to a State under an approved applica-
24 tion under subsection (d) into the Workforce Invest-
25 ment Fund under section 132(b)(1) in order to re-

duce inefficiencies in the administration of federally-funded State and local employment and training programs.

“(2) TREATMENT OF FUNDS.—

“(A) IN GENERAL.—Notwithstanding subsection (c), a State with an approved application under subsection (d) may treat any and all funds consolidated into the Workforce Investment Fund as if they were original funds allotted to a State under section 132(b)(1)(A).

“(B) APPLICABILITY.—Such a State shall continue to make reservations, except the reservation under section 133(a)(1)(B), and allotments in accordance with section 133(b)(2).”.

TITLE II—REPEALS

SEC. 201. REPEALS.

The following provisions are repealed:

(1) Chapter 4 of title I of the Workforce Investment Act of 1998.

(2) Title V of the Older Americans Act of 1965.

(3) Sections 1 through 13 of the Wagner-Peyser Act of 1933.

(4) Section 428 of the H-1B Visa Reform Act of 2004.

1 (5) Section 6(d)(4) and paragraphs (1) through
2 (5) of section 16(h) of the Food Stamp Act of 1977.

3 (6) Sections 101(39), 104(k)(6), and
4 311(b)(3)(9) of the Comprehensive Environmental
5 Response, Compensation, and Liability Act of 1980
6 (42 U.S.C. 9601(39); 9604(k)(6); and
7 9660(b)(3)(9)) and section 8001 of the Solid Waste
8 Disposal Act.

9 (7) Subtitle C of title I of the Workforce Invest-
10 ment Act of 1998.

11 (8) Section 173A of the Workforce Investment
12 Act of 1998.

13 (9) Section 509 of title 32, United States Code
14 (National Guard Youth Challenge Program of oppor-
15 tunities for civilian youth).

16 (10) Youth Conservation Corps Act of 1970 (16
17 U.S.C 1701 et seq.).

18 (11) Public Lands Corps Act of 1993 (16
19 U.S.C 1721–1730a).

20 (12) Sections 4103A and 4104 of title 38,
21 United States Code.

22 (13) Section 168 of the Workforce Investment
23 Act of 1998.

24 (14) Section 2021 of title 38, United States
25 Code (Homeless Veterans Reintegration Programs).

1 (15) Section 1144 of title 10, United States
2 Code (Employment assistance, job training assist-
3 ance, and other transitional services).

4 (16) Section 166 of the Workforce Investment
5 Act of 1998.

6 (17) Section 167 of the Workforce Investment
7 Act of 1998.

8 (18) Section 171(d) of the Workforce Invest-
9 ment Act of 1998.

10 (19) Section 1151 of title 20, United States
11 Code (Grants to States for workplace and commu-
12 nity transition training for incarcerated individuals).

13 (20) Section 612 of title 42, United States
14 Code (Grants for Indian Tribes).

15 (21) Snyder Act of 1921 (25 U.S.C. 13), In-
16 dian Adult Vocational Training Act of 1956 (25
17 U.S.C. 309), and the Indian Self-Determination and
18 Education Assistance Act (25 U.S.C. 450b et seq.).

19 (22) Section 412 of the Immigration and Na-
20 tionality Act (8 U.S.C. 1522), section 501(a) of the
21 Refugee Education Assistance Act of 1980 (94 Stat.
22 1809; 8 U.S.C. 1522 note), sections 212 through
23 235 of the William Wilberforce Trafficking Victims
24 Protection Reauthorization Act of 2008 (Public Law

1 110–457) and the amendments made by such sec-
 2 tions.

3 (23) Section 231 of the Second Chance Act of
 4 2007 (Public Law 110–199).

5 (24) Chapter 27 of title 29, United States Code
 6 (Women in Apprenticeship and Nontraditional Occu-
 7 pations).

8 (25) Section 242 of the Workforce Investment
 9 Act of 1998.

10 (26) Section 169 of the Workforce Investment
 11 Act of 1998.

12 (27) Section 171(e) of the Workforce Invest-
 13 ment Act of 1998.

14 **TITLE III—AMENDMENTS TO**
 15 **THE REHABILITATION ACT OF**
 16 **1973**

17 **SEC. 301. AMENDMENTS TO TITLE I.**

18 Part A of title I of the Rehabilitation Act of 1973
 19 (29 U.S.C. 720 et seq.) is amended—

20 (1) in subsection (a) of section 101—

21 (A) in paragraph (22)—

22 (i) by striking “carrying out part B of
 23 title VI, including”; and

1 (ii) by striking “that part to supple-
 2 ment funds made available under part B
 3 of”;

4 (B) in paragraph (24)(A), by striking
 5 “part A of title VI” and inserting “section
 6 109A”; and

7 (C) by adding at the end the following:

8 “(25) COLLABORATION WITH INDUSTRY.—The
 9 State plan shall describe how the designated State
 10 agency will carry out the provisions of section 109A,
 11 including—

12 “(A) the criteria such agency will use to
 13 award grants under such section; and

14 “(B) how the activities carried out under
 15 such grants will be coordinated with other serv-
 16 ices provided under this title.”; and

17 (2) by adding at the end the following:

18 **“SEC. 109A. COLLABORATION WITH INDUSTRY.**

19 “(a) **AUTHORITY.**—A State shall use not less than
 20 one-half of one percent of the payment the State received
 21 under section 111 for a fiscal year to award grants to eligi-
 22 ble entities to create practical job and career readiness and
 23 training programs, and to provide job placements and ca-
 24 reer advancement.

1 “(b) APPLICATION.—To receive a grant under this
2 section, an eligible entity shall submit an application to
3 a designated State agency at such time, in such manner,
4 and containing such information as such agency shall re-
5 quire. Such application shall include, at a minimum—

6 “(1) a plan for evaluating the effectiveness of
7 the program;

8 “(2) a plan for collecting and reporting the
9 data and information described under subparagraphs
10 (A) through (C) of section 101(a)(10), as deter-
11 mined appropriate by the designated State agency;
12 and

13 “(3) a plan for providing for the non-Federal
14 share of the costs of the program.

15 “(c) ACTIVITIES.—An eligible entity receiving a grant
16 under this section shall use the grant funds to carry out
17 a program that provides one or more of the following.

18 “(1) Job development, job placement, and ca-
19 reer advancement services for individuals with dis-
20 abilities.

21 “(2) Training in realistic work settings in order
22 to prepare individuals with disabilities for employ-
23 ment and career advancement in the competitive
24 market.

1 “(3) Providing individuals with disabilities with
2 such support services as may be required in order to
3 maintain the employment and career advancement
4 for which the individuals have received training.

5 “(d) AWARDS.—Grants under this section shall—

6 “(1) be awarded for a period not to exceed 5
7 years; and

8 “(2) be awarded competitively.

9 “(e) ELIGIBLE ENTITY DEFINED.—For the purposes
10 of this section, the term ‘eligible entity’ means a for-profit
11 business, alone or in partnership with one or more of the
12 following—

13 “(1) community rehabilitation providers;

14 “(2) Indian tribes; and

15 “(3) tribal organizations.

16 “(f) FEDERAL SHARE.—The Federal share of a pro-
17 gram under this section shall not exceed 80 percent of the
18 costs of the program.

19 “(g) ELIGIBILITY FOR SERVICES.—An individual
20 shall be eligible for services provided under a program
21 under this section if the individual is determined under
22 section 102(a)(1) to be eligible for assistance under this
23 title.”.

1 **SEC. 302. AMENDMENTS TO TITLE III.**

2 Title III of the Rehabilitation Act of 1973 (29 U.S.C.
3 771 et seq.) is amended—

4 (1) in section 301(a)—

5 (A) in paragraph (2), by inserting “and”
6 at the end;

7 (B) by striking paragraphs (3) and (4);
8 and

9 (C) by redesignating paragraph (5) as
10 paragraph (3);

11 (2) in section 302(g)—

12 (A) in the heading, by striking “And In-
13 Service Training”; and

14 (B) by striking paragraph (3);

15 (3) by striking sections 304 and 305; and

16 (4) by redesignating section 306 as section 304.

17 **SEC. 303. REPEAL OF TITLE VI.**

18 The Rehabilitation Act of 1973 (29 U.S.C. 701 et
19 seq.) is amended by repealing title VI.

○

LPPC AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 254: Developmental services, Employment First Policy

BILL SUMMARY: This bill would require the regional center, when developing an individual program plan (IPP) for a transition age youth or working age adult, to be guided by the Employment First Policy. AB 254 bill also, beginning when a consumer is 14 years of age, would require the planning team to discuss school-to-work opportunities during IPP meetings and to inform the consumer, parents, legal guardian, or conservator that the regional center is available, upon request, to participate in the consumer's individualized education program (IEP) meetings to discuss transition planning. The bill would also require the planning team, as part of the IPP process for working age adults, to address integrated employment opportunities, while respecting the consumer's right to make choices.

BACKGROUND: Last session, Chapter 231, Statutes of 2009 (AB 287) was enacted requiring the Council to create an Employment First Committee (EFC). The EFC was required to submit a report to the Legislature and Governor that identified an employment first policy and included recommendations to enhance and increase integrated employment opportunities for people with developmental disabilities. This report was submitted to the Governor and Legislature in August 2011.

The Employment First policy, as articulated in the report, is: "It is the policy of the state that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities." In order to clarify that the Employment First Policy is in no way intended to diminish any part of the IPP planning process, the following appears immediately after the policy as the first key principle underpinning the policy:

"The individual program plan (IPP) and the provision of services and supports is centered on the individual and the family. The IPP and the provision of services take into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments."

ANALYSIS/DISCUSSION: In October 2011, Eric Gelber, Chief Consultant, Assembly Human Services Committee requested specific feedback from the Council regarding

amendments for AB 254. The Legislative and Public Policy Committee (LPPC) provided such feedback at that time.

It is understood that there are some who erroneously believe that AB 254 will remove a portion of the Lanterman Act that provides for the IPP process and the ability of one's right to make choices about one's own life. It is also understood why one may be left with this impression based upon the way in which changes have been made to this bill. However, this bill makes no such changes to the Lanterman Act and the Employment First policy is designed to further the intent of the Act, be consistent with rights established under the Act, and maintain one's right to make choices in respect to the development and implementation of IPPs.

COUNCIL STRATEGIC PLAN OBJECTIVE: The State of California will adopt an Employment First policy which reflects inclusive and gainful employment as the preferred outcome for working age individuals with developmental disabilities.

PRIOR COUNCIL ACTIVITY: The Council supported AB 287 (2009) and submitted the first annual Employment First report to the Governor and Legislature in August 2011. In December 2011, the Executive Committee co-sponsored AB 254 because a hearing is scheduled for this bill on January 10, 2012 – which occurs before the next Council meeting.

RECOMMENDATION: Information only

ATTACHMENT(S): AB 254, Fact Sheet, position letters, and Council Alert

PREPARED: Christofer Arroyo January 4, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 254

Introduced by Assembly Member Beall

February 3, 2011

An act to amend ~~Section~~ *Sections* 4646.5 and 4868 of, and to add Section 4869 to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 254, as amended, Beall. Developmental services: Employment First Policy.

The Lanterman Developmental Disabilities Services Act authorizes the State Department of Developmental Services to contract with regional centers to provide support and services to individuals with developmental disabilities. The services and supports to be provided to a regional center consumer are contained in an individual program plan (IPP), developed in accordance with prescribed requirements.

Existing law requires the State Council on Developmental Disabilities to, *among other responsibilities*, form a standing Employment First Committee to identify strategies and recommend legislative, regulatory, and policy changes to increase integrated employment, *as defined*, for persons with developmental disabilities, as specified.

This bill would revise the definition of integrated employment to include supported employment, microenterprises, and self-employment, as defined.

This bill would require the regional center, when developing an individual program plan for a transition age youth or working age adult, to be guided by the Employment First Policy. The bill also, beginning

when a consumer is 14 years of age, would require the planning team to discuss school-to-work opportunities during individual program plan meetings and to inform the consumer, parent, legal guardian, or conservator that the regional center is available, upon request, to participate in the consumer's individualized education plan meetings to discuss *and coordinate* transition planning *with the school district*. The bill would require the planning team, as part of the individual program plan process for working age adults, to address integrated employment opportunities, while respecting the consumer's right to choose.

The bill would also require regional centers to ensure that consumers, beginning at 14 years of age, and, where appropriate, other specified persons, are provided with information about the Employment First Policy, about options for integrated competitive employment, and about services and supports, including postsecondary education, available to enable the consumer to transition from school to work, and to achieve the outcomes of obtaining and maintaining integrated competitive employment.

The bill would authorize the department to request information from regional centers on current and planned activities related to the Employment First Policy, including data on the numbers of consumers engaged in integrated competitive employment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4646.5 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 4646.5. (a) The planning process for the individual program
- 4 plan described in Section 4646 shall include all of the following:
- 5 (1) Gathering information and conducting assessments to
- 6 determine the life goals, capabilities and strengths, preferences,
- 7 barriers, and concerns or problems of the person with
- 8 developmental disabilities. For children with developmental
- 9 disabilities, this process should include a review of the strengths,
- 10 preferences, and needs of the child and the family unit as a whole.
- 11 Assessments shall be conducted by qualified individuals and
- 12 performed in natural environments whenever possible. Information
- 13 shall be taken from the consumer, his or her parents and other

1 family members, his or her friends, advocates, providers of services
2 and supports, and other agencies. The assessment process shall
3 reflect awareness of, and sensitivity to, the lifestyle and cultural
4 background of the consumer and the family.

5 (2) A statement of goals, based on the needs, preferences, and
6 life choices of the individual with developmental disabilities, and
7 a statement of specific, time-limited objectives for implementing
8 the person's goals and addressing his or her needs. These objectives
9 shall be stated in terms that allow measurement of progress or
10 monitoring of service delivery. These goals and objectives should
11 maximize opportunities for the consumer to develop relationships,
12 be part of community life in the areas of community participation,
13 housing, work, school, and leisure, increase control over his or her
14 life, acquire increasingly positive roles in community life, and
15 develop competencies to help accomplish these goals.

16 (3) When developing individual program plans for children,
17 regional centers shall be guided by the principles, process, and
18 services and support parameters set forth in Section 4685.

19 (4) *When developing an individual program plan for a transition*
20 *age youth or working age adult, the regional center shall be guided*
21 *by the Employment First Policy described in Chapter 14*
22 *(commencing with Section 4868). Beginning when a consumer is*
23 *14 years of age, the planning team shall discuss school-to-work*
24 *opportunities during individual program plan meetings, and the*
25 *regional center representative shall inform the consumer, parent,*
26 *legal guardian, or conservator that the regional center is available,*
27 *upon request, to participate in the consumer's individualized*
28 *education plan meetings to discuss and coordinate transition*
29 *planning with the school district.*

30 (4)

31 (5) A schedule of the type and amount of services and supports
32 to be purchased by the regional center or obtained from generic
33 agencies or other resources in order to achieve the individual
34 program plan goals and objectives, and identification of the
35 provider or providers of service responsible for attaining each
36 objective, including, but not limited to, vendors, contracted
37 providers, generic service agencies, and natural supports. The
38 individual program plan shall specify the approximate scheduled
39 start date for services and supports and shall contain timelines for

1 actions necessary to begin services and supports, including generic
2 services.

3 ~~(5)~~

4 (6) When agreed to by the consumer, the parents or legally
5 appointed guardian of a minor consumer, or the legally appointed
6 conservator of an adult consumer or the authorized representative,
7 including those appointed pursuant to subdivision (d) of Section
8 4548 and subdivision (e) of Section 4705, a review of the general
9 health status of the adult or child including a medical, dental, and
10 mental health needs shall be conducted. This review shall include
11 a discussion of current medications, any observed side effects, and
12 the date of last review of the medication. Service providers shall
13 cooperate with the planning team to provide any information
14 necessary to complete the health status review. If any concerns
15 are noted during the review, referrals shall be made to regional
16 center clinicians or to the consumer's physician, as appropriate.
17 Documentation of health status and referrals shall be made in the
18 consumer's record by the service coordinator.

19 ~~(6)~~

20 (7) (A) The development of a transportation access plan for a
21 consumer when all of the following conditions are met:

22 (i) The regional center is purchasing private, specialized
23 transportation services or services from a residential, day, or other
24 provider, excluding vouchered service providers, to transport the
25 consumer to and from day or work services.

26 (ii) The planning team has determined that a consumer's
27 community integration and participation could be safe and
28 enhanced through the use of public transportation services.

29 (iii) The planning team has determined that generic
30 transportation services are available and accessible.

31 (B) To maximize independence and community integration and
32 participation, the transportation access plan shall identify the
33 services and supports necessary to assist the consumer in accessing
34 public transportation and shall comply with Section 4648.35. These
35 services and supports may include, but are not limited to, mobility
36 training services and the use of transportation aides. Regional
37 centers are encouraged to coordinate with local public
38 transportation agencies.

39 ~~(7)~~

1 (8) A schedule of regular periodic review and reevaluation to
2 ascertain that planned services have been provided, that objectives
3 have been fulfilled within the times specified, and that consumers
4 and families are satisfied with the individual program plan and its
5 implementation.

6 (b) For all active cases, individual program plans shall be
7 reviewed and modified by the planning team, through the process
8 described in Section 4646, as necessary, in response to the person's
9 achievement or changing needs, and no less often than once every
10 three years. If the consumer or, where appropriate, the consumer's
11 parents, legal guardian, or conservator requests an individual
12 program plan review, the individual program shall be reviewed
13 within 30 days after the request is submitted.

14 (c) (1) The department, with the participation of representatives
15 of a statewide consumer organization, the Association of Regional
16 Center Agencies, an organized labor organization representing
17 service coordination staff, and the Organization of Area Boards
18 shall prepare training material and a standard format and
19 instructions for the preparation of individual program plans, which
20 embodies an approach centered on the person and family.

21 (2) Each regional center shall use the training materials and
22 format prepared by the department pursuant to paragraph (1).

23 (3) The department shall biennially review a random sample of
24 individual program plans at each regional center to assure that
25 these plans are being developed and modified in compliance with
26 Section 4646 and this section.

27 ~~SECTION 1. Section 4646.5 of the Welfare and Institutions~~
28 ~~Code is amended to read:~~

29 ~~4646.5. (a) The planning process for the individual program~~
30 ~~plan described in Section 4646 shall include all of the following:~~

31 ~~(1) Gathering information and conducting assessments to~~
32 ~~determine the life goals, capabilities and strengths, preferences,~~
33 ~~barriers, and concerns or problems of the person with~~
34 ~~developmental disabilities. For children with developmental~~
35 ~~disabilities, this process should include a review of the strengths,~~
36 ~~preferences, and needs of the child and the family unit as a whole.~~
37 ~~Assessments shall be conducted by qualified individuals and~~
38 ~~performed in natural environments whenever possible. Information~~
39 ~~shall be taken from the consumer, his or her parents and other~~
40 ~~family members, his or her friends, advocates, providers of services~~

1 and supports, and other agencies. The assessment process shall
2 reflect awareness of, and sensitivity to, the lifestyle and cultural
3 background of the consumer and the family.

4 (2) A statement of goals, based on the needs, preferences, and
5 life choices of the individual with developmental disabilities, and
6 a statement of specific, time-limited objectives for implementing
7 the person's goals and addressing his or her needs. These objectives
8 shall be stated in terms that allow measurement of progress or
9 monitoring of service delivery. These goals and objectives should
10 maximize opportunities for the consumer to develop relationships,
11 be part of community life in the areas of community participation,
12 housing, work, school, and leisure, increase control over his or her
13 life, acquire increasingly positive roles in community life, and
14 develop competencies to help accomplish these goals.

15 (3) When developing individual program plans for children,
16 regional centers shall be guided by the principles, process, and
17 services and support parameters set forth in Section 4685.

18 (4) When developing an individual program plan for a transition
19 age youth or working age adult, the regional center shall be guided
20 by the Employment First Policy described in Chapter 14
21 (commencing with Section 4868). Beginning when a consumer is
22 14 years of age, the planning team shall discuss school-to-work
23 opportunities during individual program plan meetings, and the
24 regional center representative shall inform the consumer, parent,
25 legal guardian, or conservator that the regional center is available,
26 upon request, to participate in the consumer's individualized
27 education plan meetings to discuss transition planning.

28 (5) A schedule of the type and amount of services and supports
29 to be purchased by the regional center or obtained from generic
30 agencies or other resources in order to achieve the individual
31 program plan goals and objectives, and identification of the
32 provider or providers of service responsible for attaining each
33 objective, including, but not limited to, vendors, contracted
34 providers, generic service agencies, and natural supports. The plan
35 shall specify the approximate scheduled start date for services and
36 supports and shall contain timelines for actions necessary to begin
37 services and supports, including generic services.

38 (6) When agreed to by the consumer, the parents or legally
39 appointed guardian of a minor consumer, or the legally appointed
40 conservator of an adult consumer or the authorized representative,

1 including those appointed pursuant to subdivision (d) of Section
2 4548 and subdivision (e) of Section 4705, a review of the general
3 health status of the adult or child including a medical, dental, and
4 mental health needs shall be conducted. This review shall include
5 a discussion of current medications, any observed side effects, and
6 the date of last review of the medication. Service providers shall
7 cooperate with the planning team to provide any information
8 necessary to complete the health status review. If any concerns
9 are noted during the review, referrals shall be made to regional
10 center clinicians or to the consumer's physician, as appropriate.
11 Documentation of health status and referrals shall be made in the
12 consumer's record by the service coordinator.

13 (7) A schedule of regular periodic review and reevaluation to
14 ascertain that planned services have been provided, that objectives
15 have been fulfilled within the times specified, and that consumers
16 and families are satisfied with the individual program plan and its
17 implementation.

18 (b) For all active cases, individual program plans shall be
19 reviewed and modified by the planning team, through the process
20 described in Section 4646, as necessary, in response to the person's
21 achievement or changing needs, and no less often than once every
22 three years. If the consumer or, where appropriate, the consumer's
23 parents, legal guardian, or conservator requests an individual
24 program plan review, the individual program shall be reviewed
25 within 30 days after the request is submitted.

26 (c) (1) The department, with the participation of representatives
27 of a statewide consumer organization, the Association of Regional
28 Center Agencies, an organized labor organization representing
29 service coordination staff, and the Organization of Area Boards
30 shall prepare training material and a standard format and
31 instructions for the preparation of individual program plans, which
32 embodies an approach centered on the person and family.

33 (2) Each regional center shall use the training materials and
34 format prepared by the department pursuant to paragraph (1).

35 (3) The department shall biennially review a random sample of
36 individual program plans at each regional center to assure that
37 these plans are being developed and modified in compliance with
38 Section 4646 and this section.

39 SEC. 2. Section 4868 of the Welfare and Institutions Code is
40 amended to read:

1 4868. (a) The State Council on Developmental Disabilities
2 shall form a standing Employment First Committee consisting of
3 the following members:

4 (1) One designee of each of the members of the state council
5 specified in subparagraphs (B), (C), (D), (F), and (H) of paragraph
6 (2) of subdivision (b) of Section 4521.

7 (2) A member of the consumer advisory committee of the state
8 council.

9 (b) In carrying out the requirements of this section, the
10 committee shall meet and consult, as appropriate, with other state
11 and local agencies and organizations, including, but not limited
12 to, the Employment Development Department, the Association of
13 Regional Center Agencies, one or more supported employment
14 provider organizations, an organized labor organization
15 representing service coordination staff, and one or more consumer
16 family member organizations.

17 (c) The responsibilities of the committee shall include, but need
18 not be limited to, all of the following:

19 (1) Identifying the respective roles and responsibilities of state
20 and local agencies in enhancing integrated and gainful employment
21 opportunities for people with developmental disabilities.

22 (2) Identifying strategies, best practices, and incentives for
23 increasing integrated employment and gainful employment
24 opportunities for people with developmental disabilities, including,
25 but not limited to, ways to improve the transition planning process
26 for students 14 years of age or older, and to develop partnerships
27 with, and increase participation by, public and private employers
28 and job developers.

29 (3) Identifying existing sources of employment data and
30 recommending goals for, and approaches to measuring progress
31 in, increasing integrated employment and gainful employment of
32 people with developmental disabilities.

33 (4) Recommending legislative, regulatory, and policy changes
34 for increasing the number of individuals with developmental
35 disabilities in integrated employment, ~~self-employment, and~~
36 ~~microenterprises~~, and who earn wages at or above minimum wage,
37 including, but not limited to, recommendations for improving
38 transition planning and services for students with developmental
39 disabilities who are 14 years of age or older. This shall include,
40 but shall not be limited to, the development of an Employment

1 ~~First Policy, a policy with the intended outcome of which is a~~
 2 ~~significant increase in~~ significantly increasing the number of
 3 individuals with developmental disabilities who engage in
 4 integrated employment, ~~self-employment, and microenterprises,~~
 5 and in the number of individuals who earn wages at or above
 6 minimum wage. This proposed policy shall be in furtherance of
 7 the intent of this division that services and supports be available
 8 to enable persons with developmental disabilities to approximate
 9 the pattern of everyday living available to people without
 10 disabilities of the same age and that support their integration into
 11 the mainstream life of the community, and that those services and
 12 supports result in more independent, productive, and normal lives
 13 for the persons served. The proposed ~~Employment First Policy~~
 14 ~~policy~~ shall not limit service and support options otherwise
 15 available to consumers, or the rights of consumers, or, where
 16 appropriate, parents, legal guardians, or conservators to make
 17 choices in their own lives.

18 (d) For purposes of this chapter, ~~“integrated the following~~
 19 ~~definitions shall apply:~~

20 (1) *“Competitive employment” means work in the competitive*
 21 *labor market that is performed on a full-time or part-time basis*
 22 *in an integrated setting and for which an individual is compensated*
 23 *at or above the minimum wage, but not less than the customary*
 24 *wage and level of benefits paid by the employer for the same or*
 25 *similar work performed by individuals who are not disabled.*

26 (2) *“Integrated employment” shall have the same definition as*
 27 *means “integrated work” as defined in subdivision (o) of Section*
 28 *4851, microenterprises, self-employment, and supported*
 29 *employment, as defined in subdivision (n) of Section 4851.*

30 (3) *“Microenterprises” means small businesses owned by*
 31 *individuals with developmental disabilities who have control and*
 32 *responsibility for decisionmaking and overseeing of the business,*
 33 *with accompanying business licenses, taxpayer identification*
 34 *numbers other than social security numbers, and separate business*
 35 *bank accounts. Microenterprises may be considered integrated*
 36 *competitive employment.*

37 (4) *“Self-employment” means an employment setting in which*
 38 *an individual works in a chosen occupation, for profit or fee, in*
 39 *his or her own small business, with control and responsibility for*
 40 *decisions affecting the conduct of the business.*

1 (e) The committee, by July 1, 2011, and annually thereafter,
2 shall provide a report to the appropriate policy committees of the
3 Legislature and to the Governor describing its work and
4 recommendations. The report due by July 1, 2011, shall include
5 the proposed ~~Employment First Policy~~ *policy* described in
6 paragraph (4) of subdivision (c).

7 SEC. 2.

8 SEC. 3. Section 4869 is added to the Welfare and Institutions
9 Code, to read:

10 ~~4869. In furtherance of the Employment First Policy established~~
11 ~~pursuant to this chapter, the individual program plan process for~~
12 ~~working age adults shall address integrated employment~~
13 ~~opportunities, while respecting the consumer's right to choose.~~

14 4869. (a) (1) *It is the policy of the state that integrated,*
15 *competitive employment is the priority outcome for working age*
16 *individuals with developmental disabilities. This policy shall be*
17 *known as the Employment First Policy.*

18 (2) *This policy is in furtherance of the intent of this division to*
19 *make services and supports available to enable persons with*
20 *developmental disabilities to approximate the pattern of everyday*
21 *living available to people without disabilities of the same age, to*
22 *support the integration of persons with developmental disabilities*
23 *into the mainstream life of the community, and to bring about more*
24 *independent, productive, and normal lives for the persons served.*

25 (3) *Implementation of the policy shall be consistent with the*
26 *rights established pursuant to this division, including the right of*
27 *people with developmental disabilities to make informed choices*
28 *with respect to individual program planning and implementation.*

29 (4) *Integrated competitive employment is intended to be the first*
30 *option considered for working age individuals, but individuals*
31 *may choose goals other than integrated competitive employment.*

32 (b) *Regional centers shall ensure that consumers, beginning at*
33 *14 years of age, and, where appropriate, their parents, legal*
34 *guardians, or conservators, are provided with information, in a*
35 *language that the consumer and, as appropriate, the consumer's*
36 *representative understand, about the Employment First Policy,*
37 *about options for integrated competitive employment, and about*
38 *services and supports, including postsecondary education,*
39 *available to enable the consumer to transition from school to work,*

1 *and to achieve the outcomes of obtaining and maintaining*
2 *integrated competitive employment.*

3 *(c) The department may request information from regional*
4 *centers on current and planned activities related to the Employment*
5 *First Policy, including data on the numbers of consumers engaged*
6 *in integrated competitive employment.*

7 *(d) As appropriate, the department shall post information on*
8 *its Internet Web site pertaining to the Employment First Policy,*
9 *including technical assistance and training materials, best*
10 *practices, resources, and regional center-specific data, by gender,*
11 *race, and type and severity of disability, on progress made in*
12 *increasing the number of consumers in integrated employment,*
13 *and the number of consumers earning wages at or above minimum*
14 *wage.*

O

AB 254 (Beall) – FACT SHEET

Employment of People with Developmental Disabilities

BACKGROUND

In 2009, the Legislature enacted AB 287 (Beall), which established a standing "Employment First Committee" (EFC) within the State Council on Developmental Disabilities. AB 287's findings and declarations recognized that working age people with disabilities are among the most unemployed and underemployed members of society and that people with developmental disabilities are an important and largely untapped employment resource. AB 287 also recognized the importance of adequate and early transition planning so that students with developmental disabilities are able to move directly from school to work. The importance of collaboration and cooperation by many state and local agencies is also emphasized.

Under AB 287, the EFC is charged with:

- Developing a proposed state policy intended to result in a significant increase in the number of people with developmental disabilities in integrated employment, and the number of individuals who earn wages at minimum wage or above.
- Identifying respective roles and responsibilities of state and local agencies in enhancing integrated and gainful employment opportunities for people with developmental disabilities.
- Identifying strategies, best practices, and incentives, including ways to improve the transition planning process, and increase employer participation.
- Recommending goals for and approaches to measuring progress in increasing integrated and gainful employment of people with developmental disabilities.
- Recommending legislative, regulatory, and policy changes.

THIS BILL

AB 287 required that the EFC report on its activities and recommendations annually to the Legislature and the Governor. The first annual report, issued in July 2011, was required to and did include, among its proposals and recommendations, the proposed policy on integrated competitive employment.

This bill would adopt this proposed "Employment First Policy," stating that:

It is the policy of the state that integrated, competitive employment is the priority outcome for working age individuals with developmental disabilities.

The bill states that the policy is in furtherance of the intent of the Lanterman Act that people with developmental disabilities be integrated into the mainstream of community life and receive services and supports that enable them to live more independent, productive, and normal lives. The policy is also required to be consistent with rights established under the Act, including the right of people with developmental disabilities to make informed choices with respect to the development and implementation of their individual program plans.

SPONSORS

State Council on Developmental Disabilities
Service Employees International Union

STATUS

Amended January 4, 2012

Staff Contact: Eric Gelber (916) 319-2089



State Council on Developmental Disabilities

website ■ www.scdd.ca.gov email ■ council@scdd.ca.gov

1507 21st Street, Suite 210
Sacramento, CA 95811



STATE OF CALIFORNIA

Edmund G. Brown Jr.
Governor

(916) 322-8481
(916) 443-4957 fax
(916) 324-8420 TTY

December 21, 2011

Assemblymember Jim Beall, Jr., Chairperson
Members, Assembly Human Services Committee
State Capitol, Room 5016
Sacramento, CA 95814

Dear Assemblymember Beall and Committee Members:

The State Council on Developmental Disabilities (SCDD) is a State agency mandated to advocate, promote and implement policies and practices that achieve self-determination, independence, productivity and inclusion in all aspects of community life for Californians with developmental disabilities and their families. In implementing this mandate, the Council has adopted a support position on Assembly Bill (AB) 254 and offers to be a co-sponsor of the bill.

As amended, AB 254 will place the Council's proposed employment first policy into state law, thus guiding California to focus on integrated competitive employment for individuals with developmental disabilities. This focus is critical to enhancing the productivity, independence and inclusion of these individuals into society and reducing their dependence segregated services, thus reduce costs to the State of California. Employers across the nation have confirmed many benefits when employing individuals with disabilities, including better than average attendance and highly motivated and productive employees who often require few accommodations to be successful. This opportunity needs to be available to all individuals with developmental disabilities. The bill recognizes and retains an individual's right to make informed choices about their future and that there are a variety of paths to employment including post-secondary education and other vocational training options, however the outcome is real work side-by-side others with and without disabilities.

This bill is good for the economy, good for business and good for individuals with disabilities as they become productive members of society and give back as contributing/taxpaying members of the community. We urge the Committee's support of AB 254 when heard on January 10, 2012.

Sincerely,

LEROY SHIPP
Chairperson

cc: Eric Gelber, Chief Consultant, Assembly Human Services Committee

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."



Area 4 Board

Office of the State Council on Developmental Disabilities

236 Georgia Street, Suite 201, Vallejo, CA 94590
(707) 648-4073 (707) 648-4100 fax ab4@scdd.ca.gov

December 21, 2011

Assemblymember Jim Beall, Jr., Chairperson
Members, Assembly Human Services Committee
P.O. Box 942849, Room 5016
State Capitol
Sacramento, CA 94249-0024

Dear Assemblymember Beall and Committee Members:

I am writing on behalf of the members of the Area 4 Developmental Disabilities Board to express the Board's strong support of AB 254.

Our members are adults who have a developmental disability as well as family and friends, and we want policy and services in California that result in integrated paid employment for individuals with developmental disabilities.

AB 254 will put the policy foundation in state law to achieve that result. It is consistent with the vision in the Lanterman Act of people with developmental disabilities being productive and included members of society and the community.

This bill is good for people with disabilities and good for the economy, please support it!

Sincerely,

A handwritten signature in cursive script that reads "Laura Mefford".

Laura Mefford
Chairperson, Area 4 Board

cc: Eric Gelber, Chief Consultant, Assembly Human Services Committee

Assemblymember Jim Beall
Chair, Assembly Human Services

January 3rd, 2012

RE: Support for AB 254

Dear Chairperson Beall,

East Bay Innovations is a non-profit organization that has provided supported employment services to people with developmental disabilities since 1999. On behalf of my organization, I wish to express our enthusiastic support for AB 254.

Over the period that we have provided supported employment services, we have seen a drastic decline in the number of supported employment service providers in our area, and we have seen our waiting list of people wanting employment opportunities grow every year. Through our work, we know that people with developmental disabilities can be employed successfully in a wide variety of occupations, can make a living wage, can be wonderful long term employees. We also feel that for people with developmental disabilities to truly be included and valued by our society, we have to see more people employed in visible and valued jobs.

While AB 254 is not an answer to the struggle to help more people with developmental disabilities to become employed, it is an important first step. AB 254 helps to set the tone and expectation that more people need to be employed in the community and make a reasonable wage. It will act as a foundation from we can start searching for solutions that will result in real change.

As a service provider of multiple services to people with developmental disabilities, we clearly see AB 254 as a bill that will push our service system forward to generate more quality employment opportunities for people with developmental disabilities. We do not see AB 254 as barrier to people with developmental disabilities directing their own future and services through the IPP process or somehow limiting the menu of service options currently available.

Again, our organization enthusiastically supports AB 254.

Sincerely,

Tom Heinz
East Bay Innovations



ASSOCIATION OF REGIONAL CENTER AGENCIES

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January 4, 2012

Honorable Jim Beall
Assemblyman, 24th District
State Capitol, Room 5016
Sacramento, CA 95814

RE: ASSEMBLY BILL 254 (Beall) – Developmental services: Employment First Policy
ARCA position: *Support if amended*

Dear Assemblyman Beall:

On behalf of the Association of Regional Center Agencies (ARCA) representing the independent, nonprofit agencies providing advocacy, clinical assessment and coordination of services to California's 260,000 children and adults with developmental disabilities, we are writing to provide input regarding proposed amendments to Assembly Bill 254 (Beall).

ARCA and the regional centers appreciate your dedicated focus to improving the lives of people with developmental disabilities in our state, specifically your attention to the issue of integrated community employment. Over the past several legislative sessions, your office has been pivotal in authoring or providing strong support for employment initiatives. In 2008, ARCA along with the State Council on Developmental Disabilities and Disability Rights California co-sponsored Assembly Bill 287 establishing California's first Employment First Policy development committee. The report produced by this workgroup outlined the framework for Assembly Bill 254 and provided some general guidance to the community on integrating the notion of employment into the lives of people with developmental disabilities.

ARCA and the regional center have a long-standing position of strong support for not only community integration of people with developmental disabilities, but also to provide avenues and connections for competitive employment opportunities. Regional centers have worked alongside providers to foster relationships with large employers such as Target, Home Depot, Safeway, Marriot and many others. They have also worked closely with their communities to target small businesses to hire people served by the regional centers. The benefits of these associations have yielded numerous jobs for people with developmental disabilities and more in the pipeline. Former First Lady Maria Shriver's WE Include employment initiative, of which ARCA and the regional centers were a primary partner also helped provide a nexus to more partnership opportunities.

While ARCA and the regional centers are grateful for an opportunity to have a comprehensive Employment First policy, we respectfully ask you to consider some of the concerns facing regional centers at this time. Over the past decade, regional centers have been required year over year to provide more services with less funding. Regional centers recognize this reality exists across all sectors of public services, however the demand on regional centers to meet all of the mandates on limited resources has become unsustainable. As payers of last resort, regional centers share the responsibility of assisting people with developmental disabilities reach their full potential in the community. This shared role includes partnerships with public education, counties, and other entities to ensure people are receiving the necessary services and supports in the most least restrictive setting.

Over time as resources have dwindled for some of our partner agencies, regional centers have been placed in the precarious position of ensuring continuity of care and services without an adequate augmentation of staff or funding. With skyrocketing caseloads to maintain, service coordinators have little time or opportunity to cultivate relationships with parents, families and the people served and carefully identify the full scope of their needs. Coupled with the decreased levels of support from generic agencies, regional center service coordinators are being stretched to a breaking point.

In a thorough review of the proposed amended language in AB 254, the ARCA Employment Committee and Legislative Committee, both comprised of regional center directors, staff, parents and family members all agree that there are some tremendous responsibilities placed in the hands on already overburdened service coordinators and other regional center staff.

The amendments to AB 254 create an additional workload to regional center staff. We believe these functions are primarily the responsibility of the public school system as providers of a free and appropriate education for these school-age children. The enhanced role of regional centers in this bill seems to inadvertently overlook that at this point in a child/young adult's life, the school district and public education are the primary provider and coordinator of services with regional centers playing a supportive, secondary role. In addition to the scope of the regional center's role, the number of school districts with which we would be asked to coordinate with would be an untenable expectation. For example, at Alta California Regional Center which represents Sacramento County and ten surrounding counties in the region they work with over 80 separate school districts.

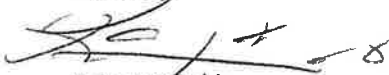
Beyond the lack of personnel resources, ARCA and the regional centers are also concerned about the provision requiring staff to provide information "in a language that the consumer and, as appropriate, the consumer's representative understand." This onerous fiscal requirement to develop materials and provide specific translations into certain dialects and languages is beyond the capacity of any regional center, let alone those whose catchment areas cover a diverse population speaking many languages.

An additional concern rests upon another amendment stating that the Department of Developmental Services may request information from regional centers on current and planned activities related to the Employment First Policy. Regional centers recognize the importance of ongoing data tracking to assist in measuring the success of this policy, however the collection of data points absent specific direction from the Department to be reportable at any given time is an additional workload on regional center staff.

We look forward to continue engaging with your office, the Assembly Human Services Committee and other developmental services stakeholder groups to further refine language around implementation of the Employment First Policy at regional centers and throughout our system. We hope that by working together to address the aforementioned issues that ARCA and the regional centers would be able to provide our support for AB 254 (Beall).

Regional centers remain firmly committed to increasing employment options and opportunities for people with developmental disabilities and appreciate your partnership in this endeavor.

Sincerely,



Robert J. Baldo
Executive Director

Cc: Eric Gelber, Assembly Human Services Committee
Mary Bellamy, Assembly Republican Office of Policy
Lisa Murawski, Assembly Appropriations Committee
Julie Souliere, Assembly Republican Fiscal Office
Terri Delgadillo, Department of Developmental Services
ARCA Board of Directors

Educate. Advocate.

Educating ourselves as parents and caregivers so we can better Advocate for our children with special needs.

January 4, 2012

Assemblymember Jim Beall, Chairperson Human Services Committee CA Assembly
State Capitol
Room 5016
Sacramento, CA 95814
916 319 2024
Fax 916 319 2124
Assemblymember.beall@asm.ca.gov

Assembly Human Services Committee Members:

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Assemblymember Anthony Portantino
Assemblymember.portantino@asm.ca.gov
Eric Gelber Consultant
Eric.Gelber@asm.ca.gov

Re: AB 254 OPPOSE unless amended

Dear Distinguished Assemblymembers,

This past July, Educate. Advocate. wrote to the State Council on Developmental Disabilities (SCDD) to express our concern with the wording of their proposed "Employment First" policy for California.* The wording SCDD wants added to the Lanterman Act is:

"It is the policy of the state that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities."

At their meeting on July 27, the members of the SCDD demonstrated their determination to pass this policy, regardless of the concerns raised by community members. **Of the 80 pieces of written testimony they received, 75 were opposed to the language.** But the community input they received

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Educating ourselves as parents and caregivers so we can better Advocate for our children with special needs.

made no difference. Despite the overwhelming majority of public input against their proposed language, they passed the statement as is, with no changes.

Educate. Advocate. opposes the current wording of the Employment First Policy. We believe any law that mandates the same priority outcome for everyone violates the essential promise of the Lanterman Act, which is that every person decides his or her own life goals through the Individual Program Planning (IPP) process. Educate. Advocate. wants alternative wording that keeps the intent to promote employment for people with developmental disabilities and protects each individual's IPP rights.

Supporters of the bill say it is consistent with the individual's right under the Lanterman Act to make informed choices, because of language in another part of the bill. They say the policy statement must be strong in order to move the system forward. But the key policy statement plainly says that one priority outcome is **the same for all**. A statement like this would fundamentally change the Lanterman Act.

Assembly bill AB 254 will have a legislative hearing on January 10, 2012 at 1 30 pm. We at Educate. Advocate. encourage Assemblymembers to amend the language of the bill to the following:

"It is the policy of the state that opportunities for integrated competitive employment are available for all people who choose to work."

We thank you for your time. Should you have questions for us, do not hesitate to contact Educate.Advocate at 909 961 4115 or through our website, <http://educateadvocateca.com>

Sincerely,



Kristie Renee' Sepulveda-Burchit
President Educate.Advocate.

<http://educateadvocateca.com>

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LEGISLATIVE ALERT

ASSEMBLY BILL 254

EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

Assembly Bill (AB) 254 promoting employment of individuals with disabilities is scheduled for a legislative hearing on:

DATE: January 10, 2012

PLACE: Assembly Human Service Committee
Room 437
State Capitol
Sacramento, CA

TIME: 1:30 pm

AB 254 was introduced in 2011 and is currently being amended to:

- Require regional centers be guided by the Employment First policy when developing an individual program (IPP) with a transition age youth or working age adult;
- Defines “competitive employment, integrated employment, microenterprises, and self-employment;
- Establishes an Employment First Policy in state law that reads: “It is the policy of the state that integrated competitive employment is the priority outcome for working age individuals with developmental disabilities”;
- Clarifies that implementation of this policy is consistent with the rights established under the Lanterman Act, including the right to make informed choices;

- Requires that regional centers inform consumers, families and others about the Employment First policy and options for integrated competitive employment and services and supports designed to lead to employment; and
- Allows the Department of Developmental Services (DDS) to request information from regional centers about the number of consumers in integrated competitive employment.

This is your chance to share your opinion on employment of individuals with disabilities with the Legislature by contacting members and staff of the Assembly Human Services Committee before January 10, 2012 with your position on AB 254. Members and staff are:

Member	Address	Telephone	Fax	Email
Assemblymember Jim Beall, Chairperson	State Capitol Room 5016 Sacramento, CA 95814	916-319-2024	916-319-2124	assemblymember.beall@asm.ca.gov
Assemblymember Brian Jones	State Capitol Room 3147 Sacramento, CA 95814	916-319-2077	916-319-2177	assemblymember.jones@asm.ca.gov
Assemblymember Tom Ammiano	State Capitol Room 4005 Sacramento, CA 95814	916-319-2013	916-319-2113	assemblymember.ammiano@asm.ca.gov
Assemblymember Shannon Grove	State Capitol Room 3098 Sacramento, CA 95814	916-319-2032	916-319-2132	assemblymember.grove@asm.ca.gov
Assemblymember Isadore Hall	State Capitol Room 3123 Sacramento, CA 95814	916-319-2052	916-319-2152	assemblymember.hall@asm.ca.gov
Assemblymember Anthony Portantino	State Capitol Room 2003 Sacramento, CA 95814	916-319-2044	916-319-2144	assemblymember.portantino@asm.ca.gov
Eric Gelber Consultant	1020 N St, #124 Sacramento, CA 95814	916-319-2089	916-319-2189	Eric.Gelber@asm.ca.gov

Joint Session Schedule

12/06/2010	Convening of the 2011-2012 Regular Session (Art. IV, Sec. 3 (a)).
01/01/2011	Statutes take effect (Art. IV, Sec. 8(c)).
01/03/2011	Legislature reconvenes (J.R. 51 (a)(1)).
01/10/2011	Budget must be submitted by Governor on or before this date (Art. IV, Sec. 12 (a)).
01/17/2011	Martin Luther King Jr. Day
01/21/2011	Last Day to submit bill requestes to the Office of Legislative Counsel.
02/18/2011	Last Day for bills to be introduced (J.R. 61(a)(1))(J.R. 54(a)).
02/21/2011	Presidents' Day
03/28/2011	Cesar Chavez Day observed.
04/14/2011	Spring Recess begins upon adjournment.
04/25/2011	Legislature reconvenes (J.R. 51 (a)(2)).
05/06/2011	Last day for policy committees to hear and report fiscal bills for referral to fiscal committees (J.R. 61 (a)(2)).
05/13/2011	Last day for policy committees to hear and report nonfiscal bills to the floor (J.R. 61 (a)(3)).
05/20/2011	Last day for policy committees to meet prior to June 6 (J.R. 61 (a)(4)).
05/27/2011	Last day for fiscal committees to hear and report bills to the Floor (J.R. 61 (a)(5)). Last day for fiscal committees to meet prior to June 6 (J.R. 61 (a)(6))
05/30/2011	Memorial Day
05/31/2011	Thru 6/3/2011 - Floor Session only. No committee may meet for any purpose (J.R. 61 (a)(7))
06/03/2011	Last day for bills to be passed out of the house of origin (J.R. 61 (a)(8)).
06/06/2011	Committee meetings may resume (J.R. (a)(9)).
06/15/2011	Budget must be passed by midnight (Art. IV, Sec. 12 (c)(3)).
07/04/2011	Independence Day.
07/08/2011	Last day for policy committees to meet and report bills (J.R. 61(a)(10)).
07/15/2011	Summer Recess begins on adjournment, provided Budget Bills has been enacted (J.R. 51(a)(3)).
08/15/2011	Legislature reconvenes (J.R. 51 (a)(3)).
08/26/2011	Last day for Fiscal Committees to meet and report bills to Floor (J.R. 61 (a)(11)).
08/29/2011	Thru 9/9/2011 - Floor Session only from August 29 - Sept. 9 . No committees may meet for any purpose (J.R. 61 (a)(12)).
09/02/2011	Last day to amend bills on the Floor (J.R. 61(a)(13)), A.R. 69 (e)).
09/05/2011	Labor Day.
09/09/2011	Last day for any bill to be passed (J.R. 61 (a)(14)). Interim Recess begins on adjournment (J.R. 51 (a)(4)).
10/09/2011	Last day for Governor to sign or veto bills passed by the Legislature before Sept. 9 and in the Governor's possession on or after Sept. 9 (Art. IV, Sec. 10(b)(1)).
11/11/2011	Veterans' Day.
11/24/2011	Thru 11/25/2011 Thanksgiving Holiday.
12/26/2011	Winter Holiday.
12/30/2011	New Year Holiday.
01/01/2012	Statutes take effect (Art. IV, Sec. 8(c))
01/04/2012	Legislature reconvenes from Interim Recess (J.R. 51 (a)(4))
01/10/2012	Budget must be submitted by Governor on or before this date (Art. IV, Sec. 12 (a)).
01/13/2012	Last day for policy committees to hear and report bills introduced in 2011 for referral to fiscal committees (J.R. 61(b)(1)).
01/16/2012	Martin Luther King Jr. Day
01/20/2012	Last Day for any committee to hear and report to the Floor bills introduced in their house in 2011 (J.R. 61(b)(2)).
01/27/2012	Last Day to submit bill requests to the Office of Legislative Counsel.
01/31/2012	Last Day for each house to pass bills introduced in 2011(J.R. 61(b)(3)) (Art.IV, Sec.10(c)).

02/20/2012 Presidents' Day

02/24/2012 Last Day for bills to be introduced (J.R. 61(b)(4))(J.R. 54(a)).

03/29/2012 Spring Recess begins upon adjournment (J.R. 51(b)(1)).

03/30/2012 Cesar Chavez Day observed.

04/09/2012 Legislature reconvenes from Spring Recess (J.R. 51 (b)(1)).

04/27/2012 Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house (J.R. 61 (b)(5)).

05/11/2012 Last day for policy committees to hear and report to the floor nonfiscal bills introduced in their house (J.R. 61 (b)(6)).

05/18/2012 Last day for policy committees to meet prior to June 4 (J.R. 61 (b)(7)).

05/25/2012 Last day for fiscal committees to hear and report to the floor bills introduced in their house (J.R. 61 (b)(8)). Last day for fiscal committees to meet prior to June 4 (J.R. 61 (b)(9)).

05/28/2012 Memorial Day

05/29/2012 Thru 6/4/2012 - Floor Session only. No committee may meet for any purpose (J.R. 61 (b)(10)).**

06/01/2012 Last day to pass bills out of the house of origin (J.R. 61 (b)(11)).

06/04/2012 Committee meetings may resume (J.R. 61 (b)(12)).

06/15/2012 Budget must be passed by midnight (Art. IV, Sec. 12 (c)).

06/28/2012 Last day for a legislative measure to qualify for the Nov. 6 General Election ballot (Elec. Code Sec. 9040).

07/04/2012 Independence Day.

07/06/2012 Last day for policy committees to hear and report bills (J.R. 61(b)(13)). Summer Recess begins on adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).

08/06/2012 Legislature reconvenes from Summer Recess (J.R. 51 (b)(2)).

08/17/2012 Last day for Fiscal Committees to hear and report bills to the Floor (J.R. 61 (b)(14)).

08/20/2012 Thru 8/31/2012 - Floor Session only. No committees may meet for any purpose (J.R. 61 (b)(15)).**

08/24/2012 Last day to amend bills on the Floor (J.R. 61(b)(16)).

08/31/2012 Last day for any bill to be passed (Art. IV, Sec. 10(c), (J.R. 61 (b)(17)). Final Recess begins on adjournment (J.R. 51 (b)(3)).

09/30/2012 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).

10/01/2012 Bills enacted on or before this date take affect January 1, 2013 (Art. IV, Sec. 8(c)).

11/06/2012 General Election.

11/22/2012 Thru 11/23/2012 Thanksgiving Holiday.

11/30/2012 Adjournment sine die at midnight (Art. IV, Sec. 3(a)).

12/03/2012 2013-14 Regular Session convenes for Organizational Session at 12 noon (Art. IV, Sec. 3(a)).

2011-12 STATE BUDGET UPDATE

The Book of Who states that “the term Grinchy shall apply when Christmas spirit is in short supply”.

It was a “grinchy” day for Californians with disabilities and school kids who are among those that will see even more cuts to funding for their services and supports. As today, not unexpectedly, the Department of Finance (DOF) officially announced that state income (revenues) is not what was hoped for when the 2011-12 State Budget was passed in June 2011 and because of that, a pre-panned “trigger” was being pulled and there would be \$1 billion reductions in budgets that pay for services and supports to individuals with disabilities, school kids and others. This trigger was part of the budget passed back in June just in case income did not appear as hoped and while some additional money did come in, it was not enough to cover the \$4 billion hole left when the budget was passed.

The attached chart from DOF explains where the nearly \$1 billion in cuts will be made on January 1, 2012 (with the exemption of those marked to happen on February 1, 2012). As reflected, two items will directly impact individuals with disabilities and seniors, those being the \$100 million reduction in the developmental services system, and \$101 million in in-home supportive services (IHSS).

In announcing these reductions during a press conference, the Governor stated that “we must live within our means”, thus the need to make the cuts. He also noted that if Californians do not vote for additional revenues (taxes) in November 2012, there will be more cuts. He noted that the cuts are less than half of what they could have been and that after these cuts, there will be no more in 2011-12 (ends June 30, 2012); however went on to say that there will be additional budget reductions presented as part of his 2012-13 Governor’s Budget (usually issued around January 10th of each year). The Governor noted that “California has to exercise fiscal discipline” and clarified that while these cuts were for current year, they will be double the amount in the new fiscal year as they will be for 12 months as opposed to just 6.

The spokesperson for DOF noted that with regard to the \$100 million reduction for developmental services, these will be managed within existing authority to manage the budget by the Department of Developmental Services (DDS) and that savings may come from developmental centers, reduced caseloads, extending the current payment discounts, and savings from insurance coverage for autism services. The person went on to say that “some additional legislation may be necessary to absorb these cuts in 2012-13”.

After the announcement, the Council was contacted by Terri Delgadillo and Mark Hutchinson from DDS to provide similar and additional information regarding the cuts to the developmental services budget. Terri reiterated that DDS expects to manage the reduction within its existing authority and will be looking a savings from caseload changes, unexpended contracts, and additional income, among other things. When asked about the impact of these cut upon federal funds potentially matched with these state funds, Terri indicated that there is no way of knowing what the impact might be.

With respect to 2012-13, DDS reiterated that the reduction will be \$200 million for a full year and in part they hope to realize a savings of approximately \$69 million from the insurance coverage for some autism services (effective January 1, 2012, but insurance companies indicate it will be July 1, 2012 for implementation) and noted that extension of the 4.25% payment reduction to regional centers and providers (scheduled to sunset in June 2011) would generate a savings of \$109 million. Terri noted that the payment reductions have resulted in negative impacts upon some providers, thus may not be a direction to take for the next year. DDS confirmed that it will implement a stakeholder process to assist in the identification of proposals for addressing the \$200 million reduction in 2012-13 in hopes of mitigating the impact. The Council is very appreciative of DDS' briefing and looks forward to fully participating in the stakeholder process.

So while the "spirit" was in short supply today, don't be a Grinch; put that energy to good use in helping your legislative representatives, community, families and friends to understand what these cuts mean in your life and get a plan together to work with others to take action so that the "spirit" can rise and flourish again.

Appropriation Citation (Budget Act Item except where noted)	Description	Amount Reduced/Adjusted
0690-102-0001	Reduce Vertical Prosecution Grants	\$14,558,000
4260-101-0001	Medi-Cal—Extend Provider Cuts and Copayments to all Managed Care Plans	\$8,642,000
4300-101-0001	Reduction to the Department of Developmental Services	\$100,000,000
5180-111-0001	In Home Supportive Services—20 Percent Reduction in Service Hours, Eliminate Funding for Local Anti-fraud Efforts	\$101,481,000
5225-001-0001	Department of Corrections and Rehabilitation—Unallocated Reduction	\$20,000,000
6110-111-0001	Home to School Transportation	\$248,000,000
6110-194-0001	Child Care—Non Proposition 98—4 Percent Across-The-Board Reduction	\$17,084,000
6110-196-0001	Child Care—Proposition 98—4 Percent Across-The-Board Reduction	\$5,900,000
Education Code Sec. 42238	Proposition 98—Reduce Apportionments (effective February 1, 2012)	\$79,600,000
6120-150-0001, 6120-160-0001, 6120-211-0001, 6120-213-0001	Eliminate State Grants to Local Libraries	\$15,866,000
6440-001-0001	University of California—Unallocated Reduction	\$100,000,000
6610-001-0001	California State University—Unallocated Reduction	\$100,000,000
6870-101-0001	Community Colleges—Reduce Apportionments, \$10 Per Unit Fee Increase	\$102,000,000
Revenues pursuant to Ch. 36, Stats. of 2011	Juvenile Justice—Increase County Charge for Youthful Offenders Sent to Department of Corrections and Rehabilitation	\$67,700,000
Total		\$980,831,000



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

EDMUND G. BROWN JR. - GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

December 13, 2011

Honorable Mark Leno, Chair
Joint Legislative Budget Committee
Senate Budget and Fiscal Review Committee

Honorable Bob Blumenfield, Chair
Assembly Budget Committee

Honorable Christine Kehoe, Chair
Senate Appropriations Committee

Honorable Felipe Fuentes, Chair
Assembly Appropriations Committee

2011-12 Revenue Forecast/Determination Pursuant to Chapter 41, Statutes of 2011

The 2011 May Revision revenue forecast reflected the state's continuing economic recovery with \$6.6 billion in higher tax receipts compared to the January Budget. The higher receipts in large part resulted from wage growth among higher income groups that pay a higher tax rate, outstripping wage growth in lower income levels. Though the May Revision forecast was higher than earlier projections, tax receipts in May and June were exceeding projections by an estimated \$1.2 billion. Based on the higher receipts, the Budget projected that 2011-12 revenues would be \$4 billion higher than otherwise projected in the May Revision. These revenues were not allocated to any specific revenue sources.

The Budget recognized the potential risk to the state's fiscal condition if revenues fell short of the forecast and established cuts and revenues that would go into effect in that event. Chapter 41, Statutes of 2011, requires the Director of Finance (Department) to update the estimate of General Fund revenues for 2011-12, compare those revenues to the Legislative Analyst's November estimate, and determine which estimate is higher. The Department of Finance's updated revenue estimate for 2011-12 is \$86,247,700,000. This amount is \$2,204,800,000 lower than the revenue specified in Section 3.94 of the Budget Act. The Legislative Analyst's estimate was \$84,764,000,000. The Department of Finance's estimate is higher and therefore the operative forecast.

Pursuant to Section 3.94 and other sections of law, the Legislature established certain specific spending reductions or revenues that shall occur based on the operative revenue forecast. Therefore, consistent with state law and pursuant to my ministerial duty, I hereby reduce or adjust the following expenditures effective January 1, 2012, and increase the following revenue in the amounts as specified:

Appropriation Citation (Budget Act Item except where noted)	Description	Amount Reduced/Adjusted
0690-102-0001	Reduce Vertical Prosecution Grants	\$14,558,000
4260-101-0001	Medi-Cal—Extend Provider Cuts and Copayments to all Managed Care Plans	\$8,642,000
4300-101-0001	Reduction to the Department of Developmental Services	\$100,000,000
5180-111-0001	In Home Supportive Services—20 Percent Reduction in Service Hours, Eliminate Funding for Local Anti-fraud Efforts	\$101,481,000
5225-001-0001	Department of Corrections and Rehabilitation—Unallocated Reduction	\$20,000,000
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6110-196-0001	Child Care—Proposition 98—4 Percent Across-The-Board Reduction	\$5,900,000
Education Code Sec. 42238	Proposition 98—Reduce Apportionments (effective February 1, 2012)	\$79,600,000
6120-150-0001, 6120-160-0001, 6120-211-0001, 6120-213-0001	Eliminate State Grants to Local Libraries	\$15,866,000
6440-001-0001	University of California—Unallocated Reduction	\$100,000,000
6610-001-0001	California State University—Unallocated Reduction	\$100,000,000
6870-101-0001	Community Colleges—Reduce Apportionments, \$10 Per Unit Fee Increase	\$102,000,000
Revenues pursuant to Ch. 36, Stats. of 2011	Juvenile Justice—Increase County Charge for Youthful Offenders Sent to Department of Corrections and Rehabilitation	\$67,700,000
Total		\$980,831,000

Estimating Methodology

The Department of Finance produces an estimate of revenues for the current fiscal year as part of the development of the Governor's Budget and the May Revision. The Department has estimated baseline revenues for its December 2011 forecast using the same methodology that was used for the 2011 May Revision estimate. This estimate reflects changes in the law that occurred subsequent to the enactment of the Budget.

To build its revenue estimate, the Department starts with a national econometric model (from IHS Global Insight) and modifies it to incorporate more recent data. The Department's state econometric model uses inputs from the national model and California-specific data to build a state forecast. Inputs to the state model, as well as the reasonableness of the outputs, are reviewed by a peer group of economists who work in California.

The Department's economic forecast forms the basis of its projections for state revenues. The Department's Financial Research Unit has developed revenue forecasting models for each of the major tax revenues. These models primarily rely on regressions that use historical relationships between economic data sources and aspects of the revenues to predict future revenue collections.

Major Changes in the Revenue Estimate From Budget Act to December 2011 Forecast

Overall, the Department's December 2011 forecast is \$2.205 billion less than the Budget Act forecast. When compared to the projections for the state's biggest three tax sources, the December 2011 forecast is \$1.8 billion above the Budget Act.

- Personal Income tax revenues are estimated to be \$1.529 billion higher. High-income wages and salaries were stronger in 2011 and 2012 than previously estimated. Proprietor's income is also estimated to be higher. In contrast, capital gains are mixed: estimated to be slightly lower in 2011 and slightly higher in 2012.
- Sales tax revenues are estimated to be \$232 million lower. The lower revenues are the result of legislation that delayed the implementation of use tax collection changes, a lower projection of inflation, and a higher projection of unemployment.
- Corporation tax revenues are estimated to be \$467 million higher, primarily because of a higher corporate profits forecast.

However, this net increase in the state's biggest three tax sources was insufficient to fully offset the \$4 billion in unallocated revenues described above.

Attachment A provides more information about the economic and revenue forecasts.

If you have any questions regarding this matter, please call Mark Hill, Program Budget Manager, at (916) 322-2263.

Sincerely,

/s/ Ana J. Matosantos

ANA J. MATOSANTOS
Director

Attachment

cc: Honorable Bob Huff, Vice Chair, Senate Budget and Fiscal Review Committee
Honorable Jim Nielsen, Vice Chair, Assembly Budget Committee
Mr. Mac Taylor, Legislative Analyst (3)
Ms. Keely Bosler, Staff Director, Senate Budget and Fiscal Review Committee
Mr. Bob Franzoia, Staff Director, Senate Appropriations Committee
Mr. Seren Taylor, Staff Director, Senate Republican Fiscal Office
Mr. Craig Cornett, Senate President pro Tempore's Office (2)
Mr. Christian Griffith, Chief Consultant, Assembly Budget Committee
Mr. Geoff Long, Chief Consultant, Assembly Appropriations Committee
Mr. Eric Swanson, Staff Director, Assembly Republican Fiscal Committee
Ms. Deborah Gonzalez, Policy and Fiscal Director, Assembly Republican Leader's Office
Mr. Christopher W. Woods, Assembly Speaker's Office (2)

Economic Estimate

The economic forecast developed for December 2011 incorporates new economic data and the impact of significant national and global economic developments that have taken place since May.

New economic data had a mixed impact on the near-term California forecast. Revisions to employment estimates indicate that 2011 did not have as strong a start as had been originally thought. The temporary disruptions caused by the Japanese earthquake/tsunami and high oil prices—that were incorporated into the May Revision forecast—were followed by the federal debt ceiling controversy and the Euro zone sovereign debt crisis. As a result, state job growth remained subdued longer than originally anticipated.

California salaries and wages grew more than originally estimated in 2010. Official income estimates for the first three quarters of 2010 had indicated that total state wage income had grown 0.4 percent. Subsequent revisions increased this growth rate to 1.3 percent. Actual wages and salaries earned in the fourth quarter of 2010 grew much stronger than forecast in the May Revision—4.5 percent versus 1.9 percent. Wage growth during the first half of 2011 was also stronger than forecast in the May Revision—5.2 percent versus 3.6 percent. The upwardly revised information and above-forecast results for the most recent quarters boosted the outlook for 2011 salary and wages. A more subdued national outlook led to a more restrained projection for 2012.

Select Indicators from Recent DOF Economic Forecasts National Indicators

	2011	2012
Real Gross Domestic Product (Yr-to-Yr % Chg.)		
December 2011	1.8	1.7
May Revision 2011	2.8	2.9
Corporate Profits Before Taxes (Yr-to-Yr % Chg.)		
December 2011	6.0	5.9
May Revision 2011	3.6	2.2
Automobile Sales (Millions)		
December 2011	12.6	13.2
May Revision 2011	12.9	14.7
S&P 500 Index		
December 2011	1,260	1,285
May Revision 2011	1,361	1,441
Consumer Goods Deflator (Yr-to-Yr % Chg.)		
December 2011	3.4	0.2
May Revision 2011	3.2	1.1

California Indicators

Unemployment Rate		
December 2011	12.0	12.0
May Revision 2011	12.1	10.8
Salaries and Wages (Yr-to-Yr % Chg.)		
December 2011	4.9	3.8
May Revision 2011	3.8	4.5
Proprietor's Income (Yr-to-Yr % Chg.)		
December 2011	7.8	6.6
May Revision 2011	6.8	7.2
New Housing Units (1,000s of Units)		
December 2011	46.4	52.2
May Revision 2011	54.7	86.5

Revenue Estimate

The May Revision forecast \$6.6 billion in higher baseline tax receipts compared to the January Budget. The higher receipts resulted in large part from wage growth among higher income groups that pay a higher tax rate, outstripping wage growth in lower income levels. Tax receipts in May and June significantly exceeded projections. Based on these higher receipts, the Budget projected that 2010-11 and 2011-12 revenues would be higher than otherwise projected in the May Revision by \$1.2 billion and \$4 billion respectively.

While final income tax payments and estimate payments for April and June were higher than the May Revision forecast, some of the cash predicted in June did not materialize.

The Department has performed a full and complete re-estimate of 2011-12 General Fund revenues as described below. In total, revenues are estimated to be \$86.2 billion, which is \$2.2 billion below the Budget Act forecast.

Changes in Revenue Forecasts for Major Revenues from 2010-11 Budget Act to
December 2011

Change in DOF Revenue Forecasts

(Dollars in Millions)	2011-12
Personal Income Tax	
December 2011 Forecast	\$51,937
Budget Act Forecast	\$50,408
Sales & Use Tax	
December 2011 Forecast	\$18,777
Budget Act Forecast	\$19,009
Corporation Tax	
December 2011 Forecast	\$9,479
Budget Act Forecast	\$9,012
Insurance Tax	
December 2011 Forecast	\$2,042
Budget Act Forecast	\$1,893
Other Revenue Sources	
December 2011 Forecast	\$4,048
Budget Act Forecast	\$3,961
Unallocated Revenue Increase	
December 2011 Forecast	\$0
Budget Act Forecast	\$4,000

Personal Income Tax (PIT)

New Franchise Tax Board data on 2010 returns suggests that growth rates that had been built into the Budget Act forecast for wage, dividend, net business, net partnership, and annuity incomes were understated. Though the change in 2010 income does not have a direct impact on 2011-12 revenues, this income forms the base for the estimated income in 2011 and 2012. The 2011 and 2012 income levels help to determine the tax liabilities for 2011 and 2012, and thus the revenue for 2011-12.

The Department's forecast of wage and salary growth in 2011 increased from 3.8 percent at the enactment of the Budget Act, to 4.9 percent. Proprietors' income increased from 6.8 percent to 7.8 percent. This change results in higher growth for both the Net Business and Net Partnership income components of Adjusted Gross Income (AGI).

The 2011 capital gains forecast has been reduced from \$67 billion to \$63 billion. Net 2011-12 accruals were reduced by \$64 million to account for a prior-year gain of the same amount to the General Fund for the Mental Health Service Fund adjustment settle-up in July 2011.

Over and above the changes to the input forecast variables, 2011-12 PIT cash through November is tracking \$541 million above the Budget Act estimate. While an important

factor, receipts from high-income tax payers do not follow a predictable pattern, thus, cash-to-date is not a definitive indicator of annual revenues.

Estimates for recently enacted legislation for this forecast increased \$176 million over those used in the Budget Act.

The net effect of these changes was that the December forecast is higher by \$1.529 billion for 2011-12 as compared to the Budget Act.

Sales and Use Tax

Revisions to the forecast of economic variables have had a negative impact on the revenue forecast. The California unemployment rate was revised upward by 110 basis points in 2012. Housing permits were revised significantly downward, with the largest revisions occurring in calendar year 2012. The U.S. consumer goods deflator and auto sales were also revised modestly downward, with just a small decline in 2011, but a more significant decline in 2012. However, California wages and salaries were revised upward.

The Budget Act sales tax forecast had assumed that Chapter 7, Statutes of 2011, First Extraordinary Session (ABx1 28), signed into law on June 29, 2011, would lead to \$200 million in General Fund sales and use tax revenues in 2011-12. This bill clarified the obligations under existing law for out-of-state retailers to collect and remit use tax on sales of tangible personal property to California residents. Subsequent to the Budget Act, an agreement was reached leading to the enactment of Chapter 313, Statutes of 2011 (AB 155) to delay implementation of the provisions of that bill until at least September 15, 2012. Also, certain parts of the law were revised to reduce the number of impacted firms. As a result, the forecast assumes no sales tax revenues in 2011-12 from this measure.

The December forecast of the Sales and Use Tax analyzed cash receipts from the first prepayment for fourth-quarter sales, which was due November 24, 2011. These cash receipts were strong, which led to a higher estimate for fourth-quarter taxable sales than what was suggested by the economics.

Corporation Tax

Based on higher forecast corporate profits, the taxable profits estimate for 2011-12 was \$165.1 billion, or 1.5 percent higher than the Budget Act estimate of \$162.6 billion. By itself, this change would translate into an increase of net Corporation Tax payments of \$344 million. However, the estimated impact of recently enacted legislation decreased revenues by \$132 million from the Budget Act forecast to the December forecast. Changes in the estimated accruals added \$282 million and an adjustment of -\$27 million was required to reconcile agency and final controller cash. The net impact of these changes is an increase of \$467 million.

Insurance Tax

The insurance tax revenue in 2011-12 increased by approximately \$150 million from the Budget Act to the December forecast. About \$100 million of the total \$150 million increase is attributable to the recently completed 2011 insurance tax surveys. The most recent

survey indicates that total premiums will increase by 6.5 percent and 3.8 percent in 2011 and 2012, respectively. The remaining \$50 million increase primarily reflects a combination of actual cash gains in recent months and technical calibrations made to the insurance tax revenue forecast model to more accurately attribute components of this tax (e.g., quarterly payments, final payments, refunds, etc.) to the proper time periods. The increase also reflects the updated estimate for the revenue impacts from a 2006 Board of Equalization decision in the *California Automobile Insurance Company* case. This estimate increases net Insurance Tax revenue by decreasing refunds by \$9 million.

Vehicle License Fee

The Budget estimated that an additional \$150 million in Vehicle License Fee (VLF) General Fund revenue would be collected in 2011-12. However, based upon actual receipts for the first five months of 2011-12, and a noticeable rate of decline in those receipts, the VLF estimate for 2011-12 was revised down to \$80 million.

Other Revenues

Other revenue sources (including alcoholic beverage and tobacco taxes, interest earnings, transfers, and loans) have increased by \$87 million. The largest adjustment reflects a decline in transportation debt service cost estimates that shifts \$91.5 million in weight fee revenues from reducing expenditures for debt service to instead be transferred to the General Fund. This change occurs automatically under existing law.



Washington Update

December 19, 2011

In this issue:

- ✓ DD Councils Hold Steady in FY 2012 Appropriations. Government Shut Down Averted
- ✓ House Rejects Senate-passed Medicare Doc Fix, Extension of Payroll Tax Deduction
- ✓ Senate Rejects Balanced Budget Amendments, Rejected Earlier by House
- ✓ HHS Announces Proposed Benchmarks for Essential Health Benefits Under Affordable Care Act
- ✓ Appendix – Additional Labor-HHS-Education FY 2012 Appropriations

DD Councils Hold Steady in FY 2012 Appropriations.¹ Government Shut Down Averted.

In a rare Saturday session, the Senate passed the megabus appropriations bill 67-32 which the House had passed 296-121 late last Thursday, December 15. The bill includes funding for the DD Councils and the rest of discretionary funding in the Labor-HHS-Education appropriations package, as well as for the remainder of all federal discretionary spending for the rest of FY 2012. To avert a government shutdown, another short-term Continuing Resolution is in effect until December 23. The Senate also rejected a House-passed measure that would have imposed an additional across the board 1.8% cut.

The DD Councils and our DD Act colleagues have reason to celebrate this appropriations measure. The DD Councils will be funded at \$74,774,409 after an across-the-board cut of 0.189% from the \$74,916,000 that was in the House and Senate Labor-HHS-Education appropriations bills. In light of the pressure to cut federal spending, while the decrease in funding to the Administration on Developmental Disabilities for voting access is disappointing, it is a victory to have the other DD programs remain essentially intact.

¹ Federal funding for the DD Councils is discretionary funding that is supposed to be in a bill approved by both the House and Senate Labor-HHS-Education Appropriations Subcommittees, then by the House and Senate full Appropriations Committees, then by both the House and Senate, and then signed by the President before the beginning of the new Fiscal Year on October 1. Both the House and the Senate have eleven other Appropriations Subcommittees in addition to the Labor-HHS-Education. In recent years this procedure has rarely been followed. Rather Congress often passes one or more Continuing Resolutions to fund the government temporarily before passing a final funding measure.

Below is a chart with the figures (without the 0.189 across-the-board cut) for the DD Councils, P&A's, UCEDDs and the Administration on Developmental Disabilities' Voting Access and Projects of National Significance. Appended to this *Washington Update* is a list of additional Labor-HHS-Education appropriations for FY 2012.

	<u>FY11</u> <u>FY12 Conf</u>	<u>FY12 President</u>	<u>FY12 Senate</u>	<u>FY12 House</u>
DD Councils \$74,916,000	\$74,916,000	\$75,066,000	\$74,916,000	\$74,916,000
Protection and \$40,942,000 Advocacy	\$40,942,000	\$41,024,000	\$40,942,000	\$40,942,000
Voting Access \$5,245,000	\$17,375,000	\$0	\$5,245,000	\$0
Projects of National \$8,333,000 Significance	\$14,134,000	\$8,333,000	\$8,333,000	\$8,333,000
UCEDD \$38,865,000	\$38,865,000	\$38,943,000	\$38,865,000	\$35,381,000

Note: This chart does not reflect an additional 0.189 across-the-board cut that was enacted.

House Leaders Reject Senate-passed Medicare Doc Fix, Extension of Payroll Tax Deduction

On Saturday, the Senate also approved a compromise measure that would stop a 27 percent pay cut to physicians under Medicare that is due to go into effect on January 1, 2012. It also extended for two months the payroll tax deduction that is due to expire at the end of this month. The Senate did so even though the bill had a provision regarding an oil pipeline through Canada to Texas and other controversial provisions.

Although the Senate reached agreement on this compromise measure at the request of House Speaker John Boehner, Boehner and other Republican House leaders are rejecting it and calling for a full year payroll tax cut extension, something that Senate Democrats would also like to see but gave up to agree on the compromise measure.

Senate Rejects Balanced Budget Constitutional Amendments, Rejected Earlier by House

On December 15th, the Senate voted down two proposals for a Constitutional amendment to require the federal government to have a balanced budget. The House had previously rejected

both proposals as well. Votes were required before the end of 2011 pursuant to the legislation enacted last August that lifted the US debt ceiling and established the Super Committee that since failed to agree on recommended savings of at least \$1.2 trillion. They were largely seen as political tools and were not expected to be enacted.

For an analysis of how a balanced budget amendment would be harmful for social programs, visit The Center for Budget and Policy Priorities
<http://www.cbpp.org/cms/index.cfm?fa=view&id=3644>

HHS Announces Proposed Benchmarks for Essential Health Benefits Under the Affordable Care Act

On December 16, HHS issued a bulletin (in anticipation of a later proposed regulation) that proposes benchmarks for the essential health benefits to be offered in insurance plans under the Affordable Care Act. **Comments are due by Jan 31, 2012** and can be sent to:
EssentialHealthBenefits@cms.hhs.gov.

States could choose one of the following health insurance plans as a benchmark:

- One of the three largest small group plans in the state;
- One of the three largest state employee health plans;
- One of the three largest federal employee health plan options;
- The largest HMO plan offered in the state's commercial market.

According to the HHS release, the benefits and services included in the health insurance plan selected by the state would be the essential health benefits package. Plans could modify coverage within a benefit category so long as they do not reduce the value of coverage. Consistent with the law, states must ensure the essential health benefits package covers items and services in at least ten categories of care, including preventive care, emergency services, maternity care, hospital and physician services, and prescription drugs. If a state selects a plan that does not cover all ten categories of care, the state will have the option to examine other benchmark insurance plans, including the Federal Employee Health Benefits Plan, to determine the type of benefits that will be included in the essential health benefits package.

HHS clarified that the bulletin does not address cost sharing, such as deductibles, copayments, and coinsurance, which will be addressed in future bulletins and cost-sharing rules will determine the actuarial value of the plan.

For more information, see the HHS release at
<http://www.hhs.gov/news/press/2011pres/12/20111216b.html>

For more information, contact Peggy Hathaway, NACDD Public Policy Manager,
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APPENDIX – Additional Labor-HHS-Education Appropriations

Note: The figures below do not reflect the 0.189% across-the-board cut to all discretionary programs except for the Pell Grant program.

I - DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

The bill funds HRSA at a program level of \$6.5 billion, which is \$41 million below FY11 and \$848 million below the budget request.

Community Health Centers

The bill includes \$1.6 billion for CHCs. Combined with mandatory funding provided in the health reform law, the fiscal year 2012 program level for CHCs is \$2.8 billion—an increase of approximately \$200 million. This level will allow for base grant adjustments for all existing CHCs and the expansion of the national network of clinics.

Autism (HRSA)

The bill provides no less than the FY11 level of \$47.708 million for activities authorized in the Combating Autism Act, which is the same as the FY11 level.

CENTERS FOR DISEASE CONTROL (CDC)

The bill includes \$5.667 billion in discretionary funding for the CDC. In addition CDC is allocated an additional \$371 million through the Public Health Service Evaluation Tap for a total discretionary appropriations program level of \$6.1 billion. In addition to that CDC is allocated funds from the Prevention and Public Health Fund, which is not eliminated in the 2012 Conference Agreement.

Birth Defects, Developmental Disabilities, Disability and Health

The bill includes \$138.07 million, \$2 million above FY11 and \$5.83 million below the President's request.

Autism (within Birth Defect and Developmental Disabilities)

The bill provides \$21.38 million for CDC's autism activities, the same as the FY11 level, but \$2.4 million below the President's request.

Occupational Safety and Health

The bill includes a program level of \$293.627 million, \$22.45 million below FY11 and \$33.7 million above the President's request. The bill includes \$24.321 million for ERCs, the same as FY11. Within the total for the National Occupational Research Agenda, the omnibus includes not less than the FY11 level for the Agriculture, Forestry and Fishing Program.

Cancer

The bill includes \$350.3 million for cancer prevention and control efforts at the Centers for Disease Control and Prevention. Within this funding skin cancer would receive \$2.15 million, the same as FY11.

Polio Eradication

The bill includes \$111.6 million for polio eradication, \$10 million over FY11 and \$400,000 below the President's request. Polio also received \$39.5 million (\$35 million within the Maternal and Child Health account and \$4.5 million for Afghanistan and Pakistan) in the Foreign Operations bill for USAID.

NATIONAL INSTITUTES OF HEALTH (NIH)

The conference agreement provides \$30.690 billion for NIH, an increase of \$299 million over FY 2011 and \$758 million below the President's request. The agreement reduces the salary cap on extramural grants from Executive Level I (\$199,700 in 2011) to Executive Level II (\$179,700). The conference agreement also includes language to implement the creation of the National Center for Advancing Translational Sciences (NCATS) and eliminate the National Center for Research Resources (NCRR), transferring the various NCCR programs to other institutes and centers. The conferees also provide NCATS with up to \$10 million for the Cures Acceleration Network.

Cancer

The bill includes \$5.081 billion for the National Cancer Institute, \$23.21 million above FY11.

Drug Abuse

The bill includes \$1.055 billion for the National Institute on Drug Abuse, \$4.82 million above FY11.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

The bill includes a program level of \$3.5 billion, \$27 million below FY11 and \$73 million below the President's budget request.

Substance Abuse Treatment

The bill includes a program level of \$2.2 billion for Substance Abuse Treatment, \$16 million above FY11.

Substance Abuse Prevention

The bill includes \$186.361 million, which is \$300,000 above FY11.

ADMINISTRATION ON CHILDREN AND FAMILIES

Developmental Disabilities

The bill includes a total of \$168.301 million for developmental disabilities programs, \$17.9 million below FY11. For State Councils on Developmental Disabilities, the bill includes \$74.916 million, the same as FY11, but \$150,000 below the President's request.

DEPARTMENT OF EDUCATION

The Department of Education is funded at \$71.3 billion in the legislation, which is \$153 million below last year's level and \$9.3 billion below the budget request.

Higher Education

The bill provides \$1.87 billion for higher education, 30.75 million below FY11.

Pell Grants

The maximum Pell Grant is preserved at \$5,550 but the program's eligibility criteria has been changed. The grants may be used for a total of six years/12 semesters, not 18, as in the past. This change is expected to affect about 62,000 Pell beneficiaries and will take effect July 1, 2012. Semesters in which students are enrolled part-time will count only partially toward the 12-semester limit. Other changes include: requiring a high school diploma, GED or completion of a homeschooling program to receive a Pell grant; slightly adjusting the minimum Pell grant; and reducing the income level below which a student will automatically receive the maximum Pell grant from \$30,000 to \$23,000. These reforms are estimated by the Congressional Budget Office to save more than \$11 billion over the next 10 years.